142-676
142-876

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

NO. 144.

EDWARD L. HEDDEN, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

WILLIAM E. ISELIN, JOHN G. NEESER, AND ALFRED VON DER MUHL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 144.

EDWARD L. HEDDEN, LATE COLLECTOR OF THE PORT OF NEW YORK, IN ERROR,

vs.

WILLIAM E. ISELIN, JOHN G. NEESER, AND ALFRED VON DER MUHL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Certiorari	3	2
Summons	5	2
Complaint	7	3
Bill of particulars	10	4
Answer	13	5
Minutes of trial, etc	15	6
Judgment	17	6
Bill of exceptions	20	7
Entries	21	7
Notice to collector, July 2, 1885	25	9
July 1, 1885	26	9
Reappraisement, August 12, 1885	28	10
September 9, 1885	30	10
Protest, September 28, 1885	32	11
Notice of additional duty, September 19, 1885	37	13
Do	39	14
Decision of Secretary of Treasury, March 25, 1886	41	14
Letter Secretary of Treasury to general appraiser, June 9, 1885	45	16
Testimony of James M. Hamm	50	17
George V. Brower	52	18
Gaspar C. Barnett	52	18

	Original.	Print.
Protest to general appraiser, August 12, 1885	53	18
Testimony of Henry A. Van Lieid	65	22
Defendant's motion for verdict	66	22
Decision on motion	66	22
Testimony of George V. Brower	71	23
James Booth	104	38
Richard I. Roberts	111	35
James H. Franklin	114	36
Gaspar C. Barnett (recalled)	115	36
Charge to the jury	118	37
Defendant's requests	127	40
Assignment of errors	133	41
Joinder in error	135	42
Citation	137	43
Proof of service of citation	138	43

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William E. Iselin, John G. Neeser, and Alfred Von der Muhl, plaintiffs, and Edward L. Hedden, defendant, a manifest error hath happened to the great damage of the said Edward, L. Hedden, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-eight, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness Hon. Samuel F. Miller, senior associate justice of the said Supreme Court, the 12th day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
Circuit Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the following pages, numbered from three (3) to one hundred and thirty-six (136), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William E. Iselin and others, plaintiffs in error, against Edward L. Hedden, defendant in error, as the same remain of record and on file in said court.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsed:) 11066. U. S. Supreme Court. Edward L. Hedden, plaintiff in error, against William E. Iselin & al., defendants in error. Writ of error. Stephen A. Walker, attorney for plff. in error. Due

service of a copy of the within writ of error is hereby admitted this 13 day of September, 1888. Bangs, Stetson, Tracy & MacVeagh, att'ys for defendants in error.

(Stamp:) U. S. circuit court. Filed Sep. 13, 1888. John A. Shields, clerk.

3 The President of the United States of America to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against Edward L. Hedden, defendant, by Wm. E. Iselin & o'rs, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 14 day of July, 1886, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the day of , in the year one thousand eight hundred and eighty-six.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

STEPHEN A. WALKER,
United States Attorney,
Attorney for Defendant.

4 (Indorsed:) 11066. U. S. circuit court. W. E. Iselin & o'rs vs. Edward L. Hedden. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, July 9, 1886. Yours, Stephen A. Walker, U. S. attorney, attorney for defendant. To Bangs & Stetson, plaintiffs' attorney.

5 N. Y. Supreme Court.

WILLIAM E. ISELIN, JOHN G. NEESER, AND Alfred Von der Muhl, plaintiffs, *vs.* EDWARD L. HEDDEN, DEFENDANT.	Trial desired in the city and county of New York. Summons No. 2.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated N. Y., June 22nd, 1886.

BANGS & STETSON,
Plaintiffs' Attorneys.

Office and post-office address: No. 45 William street, New York City.

(Indorsed:) U. S. circuit court, southern district of New York.
6 William E. Iselin, John G. Neeser, and Alfred Von der Muhl, plaintiffs, against Edward L. Hedden, defendant. Summons. Bangs & Stetson, plaintiffs' attorney.

7 Circuit court of the United States for the southern district of New York.

William E. Iselin, John G. Neeser, Alfred Von der Muhl, and Adrian Iselin.—Complaint.

Plaintiffs complain:

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiffs were, during said times, partners in trade, under the firm name of Iselin, Neeser & Co., and as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3rd. The defendant, as such collector, exacted from plaintiffs, as and for duties thereon, and plaintiffs, in order to obtain said goods, were compelled to pay, and did pay, the sum of two thousand one hundred and twenty-four dollars and fourteen cents ($2,124.14) in excess of the amount required by law.

8 4th. That plaintiffs filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto.

5th. That plaintiffs made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of the defendant as to each of said entries.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the said Secretary of the Treasury and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiffs and is still due and owing to them.

9 Wherefore plaintiffs demand judgment against defendant for two thousand one hundred and twenty-four dollars and fourteen cents ($2,124.14), with interest thereon from the 26th day of June, 1886, together with the costs and disbursements of this action.

BANGS & STETSON,
Attorney for Plaintiffs,
45 *William Street, New York City.*

Name of importer (for all the importations), Iselen, Necker & Co.

	Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
1	Plain colored silks (invoice No. 9737) (Case—Z R. Marks and Nos. 710-713.)	Horgen.	Normandie.	May 11th, 1885. Horgen.	June 20th, 1885.	$1,426.10	June 22nd, 1886.	September 28th, 1885.	October 15th, 1885.	March 25th, 1886.
					Interest	113.09				
					Total	$1,539.19				
						362.50 additional duty.				
						1,099.60 penal "				
						$1,426.10				
2	Black satins composed of cotton and silk. (Invoice No. 8965.) Case marks and Nos. (H. B. 73-76).	Zurich.	Belgenland.	June 4th, 1885. Zurich.	June 18th, 1885.	528.40	June 22nd 1886.	September 28th, 1885.	October 15th, 1885.	March 25th 1886.
					Interest	56.55				
					Total	584.95				
						173.00 additional duty.				
						355.40 penal "				
						528.40				

11 (Indorsed:) U. S. circuit court, southern district of New York. William E. Iselin and others. No. 2. Against Edward L. Hedden, bill of particulars. Bangs & Stetson, attorneys for plaintiffs, 45 William st., N. Y.

12 (Bill of complaint and bill of particulars indorsed:) United States circuit court, William E. Iselin, John G. Neeser, et al. No. 2. Complaint and bill of particulars. Bangs & Stetson, attorneys for plaintiffs, 45 William street, New York City, New York. Due service of a copy of the within is hereby admitted. Dated 29 day of July, 1886. Stephen A. Walker, U. S. attorney, att'y for def't.

13 Circuit court of the United States for the southern district of New York.

WM. E. ISELIN & AL.
versus
EDWARD L. HEDDEN, COLLECTOR, ETC.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint; and he denies that the plaintiffs were compelled to pay or did pay defendant as collector or otherwise the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiffs filed with the defendant any protest or protests in writing in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in fact such goods as are described in the said complaint.

14 V. And, further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were demanded of plaintiffs, and were by plaintiffs voluntarily paid to him in his capacity as collector of customs, as and for duties due the United States on imported merchandise and were forthwith before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiffs paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

VI. And, further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were sums due from plaintiffs to the United States as duties, according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiffs and assessed with duty,

and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Wm. E. Iselin & al. vs. Edward L. Hedden, collector, etc. Answer. Stephen A. Walker, United States attorney, attorney for defendant. To Bangs & Stetson, plaintiffs' attorney. Received Aug. 20, 1886. Bangs & Stetson, per Nolan.

15 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the 30th day of November, in the year of our Lord one thousand eight hundred and eighty-six.

Present, the honorable Hoyt H. Wheeler, judge.

WILLIAM E. ISELIN ET AL.
vs. } 11066.
EDWARD L. HEDDEN.

Now come the plaintiffs by Bangs & Stetson, esqs., their attorneys, and move the trial of this case. Likewise comes the defendant, by A. C. Platt, esq., ass't U. S. attorney, his attorney. Thereupon a jury is empanelled and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court on Wednesday,

16 December 1st, 1886, the jury retire, and on their return render a verdict whereby they find for the plaintiffs in the amount of $2,124.14. It is ordered that a certificate of probable cause be entered herein, and that the defendant have a stay of all proceedings on said verdict for thirty days from December 1, 1886.

(Signed) TIMOTHY GRIFFITH,
Clerk.

17 At a stated term of the circuit court of the United States for the southern district of New York held at the court rooms thereof in the city of New York on the day of 1887.

Present: Hon. Hoyt H. Wheeler, circuit judge (by assignment).

WILLIAM E. ISELIN, JOHN G. NEESER, AND Alfred Von der Muhl
against
EDWARD L. HEDDEN.

This cause having come on for trial on the 24th and 30th days of November and the 1st day of December, 1886, before the honorable Hoyt H. Wheeler, district judge of the United States for the district of Ver-

mont, duly assigned to hold this court, and a jury duly empanelled and sworn to try the issues herein, and the evidence of the parties and the arguments of counsel and the instructions of the court having been
18 heard and the jury after due deliberation having rendered a verdict for the plaintiffs against the defendant for two thousand and one hundred and twenty-four $\frac{04}{100}$ dollars, and the plaintiff's costs having been duly taxed at the sum of sixty-four $\frac{80}{100}$ dollars and interest having been allowed to the amount of one hundred and twenty $\frac{01}{100}$ dollars,

On motion of Bangs, Stetson, Tracy and Mac Veagh, attorneys for the plaintiffs, it is now ordered, adjudged, and decreed that the plaintiffs recover from the defendant the sum of two thousand two hundred and forty-four $\frac{05}{100}$ dollars, principal and interest, together with the sum of sixty-four $\frac{80}{100}$ dollars costs as taxed, making in all the sum of two thousand three hundred and eight $\frac{85}{100}$.

Judgment signed this fifth day of November, A. D. 1887.

(Signed) JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed over all:) U. S. circuit court, so., dist. of N. Y. William E. Iselin, John G. Neeser and Alfred Von der Muhl against Ed-
19 ward L. Hedden. Judgment. Bangs, Stetson, Tracy, and MacVeagh, attorneys for complainants, 45 William st., N. Y.

(File mark:) U. S. circuit court Filed Nov. 5, 1887. Timothy Griffith, clerk.

20 United States circuit court, southern district of New York.

WILLIAM E. ISELIN, JOHN G. NEESER, ET AL., *vs.* EDWARD L. HEDDEN, AS COLLECTOR. } N. S. 11066.

Defendant's bill of exceptions.

And afterwards, to wit, on the 24th and 30th days of November, and the 1st day of December, 1886, this case came on to be tried before the Honorable Hoyt H. Wheeler, district judge of the United States for the district of Vermont, duly assigned to hold this court, and a jury duly empaneled and sworn to try the issues herein. The parties appeared by their respective counsel; Francis Lynde Stetson, esqr., for the plaintiffs; Stephen A. Walker, esq., United States attorney, and Henry C. Platt, esq., assistant U. S. attorney, for the defendant.

21 The plaintiff, by his counsel, having opened the case to the jury, offered evidence, which was admitted, as follows:

Plaintiffs' counsel offered and put in evidence the invoice by the steamer Normandie, marked Plaintiffs' Exhibit No. 1; the invoice by the steamer Belgenland, marked Plaintiffs' Exhibit No. 2; the entry by the Normandie, marked Plaintiffs' Exhibit No. 3; the entry by the Belgenland marked Plaintiffs' Exhibit No. 4. The date of the liquidation of the entry by the Normandie as stamped thereon is September 19, 1885, and upon the entry by the Belgenland, September 19, 1885.

The invoices by Normandie and Belgenland state value of importation at fcs. 21,990.95, and fcs. 6,752.15, respectively, and have each the usual consular certificate attached.

The entries are as follows:

75087 Import entry of merchandise. 5801.

22 Imported by Iselin, Neeser & Co., in the S. S. Normandie, master, from Havre. Arrived May 25, 1885, New York, June 20, 1885.

[Invoice dated Havre, May 11, '85, 50c.]

Marks.	Nos.	Packages and contents.	Total.
F. R.	710–713.	Four cases silks	21,990.95
		Add for value	3,112
			25,102.95

App. add for value, $6.53, fes. 19.3.

Value as amended	$5,498.00	
" " entered	4,845.00	$4,845
Difference	$653.00	653
Over 10% penalty		5,498

5498 50 $2,749.00.

Amended	2,749.00	for custom-house.
Original	2,422.50	Iselin, Neeser & Co., 339 Canal st.
Increased	$326.50	

June 23, 4845 50 2,422.50, penalty.

Increased duty and pen. rec'd from dist. atty., June 23, 1886, also interest. For credit 5498 20 $1,099.60 of interest, see customs acct. for June, '86, June 23, June 20, '87. Usual importer's oath follows.

23 (Endorsed:) Import. Iselin, Neeser & Co., per S. S. Normandie, from Havre. Paid June 20, 1885. Arrived May, '85. Liquidated Sep. 19, 1885. Increased duty, Jun. 23, 1886. Appeal No. 4608 M. Filed Oct. 17, 1885. Protested Sept. 28, 1885. Reappraisement, &c. Affirmed Mch. 25, '85.

74462. Import entry of merchandise, 5239. Imported by Iselin, Neeser & Co., in the str. Belgenland, , master, from Antwerp. Arrived Jun. 18, 1885, New York, Jun. 18, 1885.

[Invoice dated Zurich, June 4, 1885, 50c.]

Marks.	Nos.	Packages and contents.	Total.
H. B.	73 a 76.	Four cases silks	6,752.15
		Add for market value	664.40
		Fes. a 19	7,416.55

Incd. duty and pen. recd. from d. atty., June 23, '86, C. T.

24 Interest also received. See customs acct., June, 1886, C. T.

Amount as advanced over 107		$1,777
" " entered		1,431
Add as per reappraisement		346
	$1,431	
	346	
	1,777	

1431 715.50

Amt	$888.50	
Cr	715.50	
Inc	173.00	and penalty on $1,777 at 20 %, $355.40

1777 50 %. $888.50. Sept. 18, '85.

June 23. June 23. Iselin, Neeser & Co., 339 Canal st. 74,462. Usual importer's oath follows.

(Endorsed:) Import, Iselin, Neeser & Co., per S. S. Belgenland, from Antwerp. Paid June 18, 1885. Arrived June, 1885. Entered and liquidated Sept. 19, 1885. Increased June 23, 1886. Appeal No.
25 4607 M. Filed Oct. 17, 1885. Protested Sept. 28, 1885. Reappraisement, &c., affirmed March 25, 1886. Inc. & penalty.

Plaintiffs' counsel offered and put in evidence the importer's notice to the collector claiming a reappraisement in the case of the Normandie, which was marked Plaintiffs' Exhibit No. 5; also similar notice in the case of of the Belgenland, marked Plaintiffs' Exhibit No. 6.

Importer's notice to collector claiming reappraisement.

PORT OF NEW YORK, *July* 2, 1885.

SIR: As we consider the appraisement made by the United States appraisers too high on L. R. 710–713, four cases silks imported by Iselin, Neeser & Co., in the Normandie, from Havre, I have to request that the same may be reappraised, pursuant to law, with as little delay as your convenience will permit.
26 Very re-pectfully,

ISELIN, NEESER & CO.,
J. D. BLUMAN,
Atty.

To Hon. E. L. HEDDEN,
Collector of the Customs.

(Endorsed:) Mf. silk (faille). Reappraisement Aug't 7, 1885, a' 11 a. m. G. V. Brower, genl. appr. No. 9737. S. S. Normandie. Hamill & Booth, 98 Grand St.; C. Lambert, 33 Greene St.; H. B. Claflin & Co., 140 Church St.; Chamberlain, H. & L., 408 B'way; Lewis Bros. & Co., 86 Worth St. Approved: Lewis McMullen, appraiser. Iselin, Neeser & Co.

Importer's notice to collector, claiming reappraisement.

PORT OF NEW YORK, *July 1st*, 1885.

SIR: As we consider the appraisement made by the United States
27 appraisers too high on H. B. 73, 74, 75, 76, four cases silks imported by Iselin, Neeser & Co. in the Str. Belgenland from Antwerp, June 18, '80, we have to request that the same may be reappraised (see No. 8965) pursuant to law, with as little delay as your convenience will permit.

Very respectfully,

ISELIN, NEESER & CO.,
JAS. H. HAMM, *Atty.*

To Hon. EDWARD L. HEDDEN,
Collector of the Customs.

(Endorsed:) Mf. silk & cotton (satin). Reappraisement Wed., Sept. 9, 1885, a' 11 a. m. G. V. Brower, genl. appr. No. 8965. S. S. Belgenland. E. L. H. Roberts, C. & C., 96 Greene St.; Fleitmann & Co., 491

Broome St.; M. Bates, jr., & Co., 80 Greene St.; E. Oelbermann & Co., 59 Greene St.; Dreyfus, Kohn & Co., 35 Mercer St. Approved: Lewis McMullen, appraiser. Iselin, Neeser & Co.

28 Plaintiffs' counsel then offered and put in evidence the reappraisement in the case of the Normandie, marked Plaintiffs' Exhibit No. 7; also the reappraisement in the case of the Belgenland, marked Plaintiffs' Exhibit No. 8.

No. 9737. June 20, 1885. 75087.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE,
August 12, 1885.

SIR: We have examined a lot of mfs. silk, imported by Iselin, Neeser & Co., in the S. S. Normandie, from Horgen, May 11, '85, and do hereby certify that, in our opinion, the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States was, and we do therefore appraise the same as follows:

[Marks, numbers, description of merchandise, per aune, francs, total value.]

29	Z. R. 710/13 four cases mfs. silk, aunes, 710 9,255/75, 21 pcs. faille coul 17 1766½ 2.90	5,122.85
	711 76/319 44 18½ 3739½ 3	11,218.50
	320/22 2 (bad shades), 253 255	645.15
	127, 323/80 58 pes. 16½ 4940⅝ 2.40	11,857.50
	113 381/404, 24 pcs. 18⅝ 2022½ 3.25	6,574.35
	Francs	35,418.35
	Rabais	250.35
	Francs	35,168.00
	Dist., 19 %	6,681.90
	Francs	28,486.10

Examined. Advanced over 10 % penalty. D. L. R. No seizure.

Sept. 17, '85. Take add. duty & penalty as per reappraisement.

JAMES BOOTH,
Merchant Appraiser.
GEORGE V. BROWER,
General Appraiser.

(Endorsed:) Port of New York, general appraiser's office, August 12, 1885. G. V. Brower, general appraiser. Report on reappraise-
30 ment of mfc. silk, imported by Iselin, Neeser & Co., per S. S. Normandie, from Horgen. Advance of inv. as raised by insp. 13, 4–10 %, 2.50. Duly paid June 18, 1885, 8,965.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE,
Sept. 9, 1885.

SIR: We have examined a lot of man'f's of silk & cotton imported by Iselin, Neeser & Co., in the steamship Belgenland from Zurich, June 4, 1885, and do hereby certify that, in our opinion, the actual market value

or wholesale price of the said goods at the period of the exportation thereof to the United States in the principal markets of the country from which the same were imported into the United States, was, and we do therefore appraise the same as follows:

[Marks, numbers, description of merchandise, per aune, francs, total value.]

H. B.	# 73/76 four cases manf's. of silk & cotton, # 73.8188/210 28 pcs. satin noir 17 1421⅛ 1.50		2,132.81
31	# 74 8211/49 39 pcs. satin noir, 2,000 1.70		3,400
	# 75 8250/62.13 " " " 18 520⅝ 1.75		910.22
	8276 1 " " 50 1.95		97.50
	8263/75 13 " " 648⅜ 2.25		1,459.41
	76 8277/8306 " " 21⅛ 1526⅛ 2.35		3,587.21
	Francs		11,587.21
	Rabais		220.80
	Francs		11,366.41
	Discount 19 %		2,159.61
	Francs		9,206.80

No seizure. Examined. Advanced over 10% penalty. I. H. Sept. 17, '85. Take add. duty & penalty as per reappraisement.

R. S. ROBERTS,
Merchant Appraiser.
GEORGE V. BROWER,
General Appraiser.

(Endorsed:) Port of New York. General appraiser's office, Sept. 9, 1885. G. V. Brower, general appraiser. Report on reappraisement of man'f's of silk cotton, imported by Iselin, Neeser & Co., per steam-
32 ship Belgenland, from Zurich. Advance on invoice as taxed by insp. 24.1—10%.

Plaintiffs' counsel then offered and put in evidence two protests filed by the plaintiff with the collector of the port on the 28th of September, 1885: The protest in the case of the Normandie is marked Plaintiff's Exhibit No. 9; in the case of the Belgenland, Plaintiff's Exhibit No. 10.

NEW YORK, *September 28th*, 1885.

EDWARD L. HEDDEN, Esq.,
Collector of the Port of New York:

SIR: The protest against paying the additional duty, amounting to $1.73, and the penal duty amounting to $355.$\frac{40}{100}$, exacted from us on an importation of merchandise per steamer Belgenland from Antwerp, arrived about June 18th, 1885, because the reappraisement in consequence of which said excess of duty is demanded, was illegal and void, for the following reasons:

1st. Because Mr. Richard S. Roberts, the merchant appraiser
33 appointed by you to make the appraisement in conjunction with the general appraiser, was not a discreet and experienced merchant familiar with the character and value of the merchandise in question.

2nd. Because the said merchant appraiser was not a disinterested, or indifferent person.

3rd. Because the valuation of said importation in consequence of a *consequence of a* conspiracy between the said merchant appraiser and certain other persons (whose names are to your protestants now unknown) as fixed and appraised upon said reappraisement, was excessive and against the evidence, and contrary to the evidence of all the witnesses called by the Government produced on said appraisement.

4th. Because neither the importers of the said goods, nor their agents, were permitted to be present during the said reappraisement of the said goods, although opportunity to be so present was duly demanded
34 and refused by the general appraiser and merchant appraiser.

5th. Because, although duly requested, the general appraiser and merchant appraiser refused to permit the importers to introduce witnesses upon such reappraisement in support of their invoiced valuations, although the importers then and there desired and stated to the general appraiser and merchant appraiser that they desired to offer and examine the following witnesses as to such valuation, viz:

Mr. A. D. Fenton, the U. S. examiner, upon whose report the value of the goods was advanced, for the purpose of showing that said advanced valuation was made by him under instructions of his superior, and not because he believed such was the true value of the goods, and also the following gentlemen connected in business with the principal importers and dealers in such goods in the city of New York, and perfectly familiar with their value in the principal markets of the country whence imported, viz:

35 Mr. Wm. Schraum, of Luckmeyer & Schefer.
Mr. Seeboldt, of Passavant & Co.
Mr. W. Boetterling, of Heimann & Co.
Mr. Geo Andreae, of Wm. Schroeder & Co.
Mr. Traenokle, of Wegmy, Portier, Grose & Co.
Mr. John Oberteuffer, of Oberteuffer, Abegg & Dacinker.
Mr. W. Kabbe, of A. Person, Harriman & Co.
Mr. Heimendahl, of J. F. Decker.
Mr. J. Huber, of H. Sallenback & Co.
Mr. F. C. Smith, of Arnold, Constable & Co.
Mr. E. A. Perkins, of Dunham, Buckley & Co.
Mr. C. W. Prankard, of E. S. Jaffray & Co.
Mr. Brady, of Sweetser, Pembrook & Co.
Mr. S. J. Hall, of Chamberlain, Hall & Lyon.
Mr. Hansing, of Bates, Reed & Cooley.

6th. Because, although duly requested, the general appraiser refused to permit the importers to know or to see the witnesses or testimony introduced against them upon such reappraisement, or to give them any opportunity whatever to cross-examine such witnesses or to disprove such testimony.

36 7th. Because in the conduct of such reappraisement the said general appraiser and merchant appraiser did not exercise their own judgment and discretion, but under the stress and solely because of an order issued by the Secretary of the Treasury, under date of June 10, 1885, and of other orders subsequently issued by the said Secretary, did

refuse to the importers any opportunity whatever to introduce testimony in their own behalf, or to cross-examine witnesses, or to disprove testimony opposed to them.

ISELIN, NEESER & Co.

(Endorsed:) Iselin, Neeser & Co. Protest as to entry under date of June 18, 1885, by steamship Belgenland.

September, 1885. Bangs & Stetson, attys. for Iselin, Neeser & Co., 45 William st., New York. Custom-House, New York, Sep. 28, 1885. Received.

Plaintiffs' counsel then offered and put in evidence two notices
37 from the collector, by his deputy, under date of September 19, 1885, calling upon the plaintiffs for the payment of additional duty and penalty, as fixed by the reappraisement. The notice in the case of the Normandie is marked Plaintiffs' Exhibit No. 11; the notice in the case of the Belgenland is marked Plaintiffs' Exhibit No. 12.

Notice of additional duty.

CUSTOM-HOUSE, NEW YORK, FIFTH DIVISION,
COLLECTOR'S OFFICE, *Sept.* 19, 1885.

SIR: Upon an importation of yours, per Normandie, of June 20, '85, from , there is a balance due the United States amounting to

$1,099.60 P.
326.50 inc.

1,426.10

It is important that this amount be settled immediately, or measures must be taken to enforce collection. Checks not received.

The entry you will find at the desk of the amendment clerk. Art. 361, Treasury Regulations of 1874, reads as follows:
38 "The rights of importers in certain cases depend upon protest and appeal within a specified time after the ascertainment and liquidation of duties, and they should be notified of the time at which the duties on their respective entries are ascertained and liquidated. Collectors will therefore keep a daily record of the entries liquidated, stating the name of the vessel, the place from which and the time when she arrived, the name of the importer, and the date of entry, and will give notice of the liquidation of such entries by posting on some conspicuous place in the custom-house, accessible to the public, on the day succeeding the date of ascertainment and liquidation, a transcript of such record, there to remain for ten days, when such transcript will be removed and filed with the records of the office. The posting of such transcript will be deemed and taken to be a full notice to all parties interested."

Very respectfully,

N. B. BARTRAM,
D. Collector.

To M. ISELIN, N. & Co.

39 *Notice of additional duty.*

CUSTOM-HOUSE, NEW YORK,
FIFTH DIVISION, COLLECTOR'S OFFICE,
Sep. 19, 1885.

SIR: Upon an importation of yours, per Belgenland, of June 10, '85, from there is a balance due the United States, amounting to $355.40
173.00 inc.
528.40

It is important that this amount be settled immediately, or measures must be taken to enforce collection. Checks not received.

SEPT. 30, '85.

The entry you will find at the desk of the amendment clerk. Art. 361, Treasury Regulations of 1874, reads as follows:

"The rights of importers in certain cases depend upon protest and appeal within a specified time after the ascertainment and liquidation of duties, and they should be notified of the time at which the duties on their respective entries are ascertained and liquidated. Collectors will therefore keep a daily record of the entries liquidated, stating the name
40 of the vessel, the place from which and the time when she arrived, the name of the importer, and the date of entry, and will give notice of the liquidation of such entries by posting in some conspicuous place in the custom-house, accessible to the public, on the day succeeding the date of ascertainment and liquidation, a transcript of such record, there to remain for ten days, when such transcript will be removed and filed with the records of the office. The posting of such transcript will be deemed and taken to be a full notice to all parties interested."

Very respectfully,

N. B. BARTRAM,
D. Collector.

To M. ISELIN, N. & CO.

An appeal was taken from the decision of the collector of customs of New York to the Secretary of the Treasury upon the 15th day of October, 1885, upon the grounds stated in the protest. The appeal
41 was decided by the Secretary of the Treasury upon the 25th day of March, 1886, and was rejected on that date. Plaintiffs' counsel offered and put in evidence a copy of the decision of the Secretary of the Treasury so far as it relates to this case, which was marked Plaintiffs' Exhibit No. 13.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 25, 1886.

COLLECTOR OF CUSTOMS,
New York:

SIR: The Department is in receipt of your letter of the 23d instant, further reporting appeals (460 6M, 460 7M, & 460 8M) of Messrs. Iselin,

Neeser & Co. from your decision assessing duty (regular and additional) on the reappraised value of certain so-called "silks" imported by them into your port per Olinde Rodriques May 23d, Belgenland June 18, and Normandie June 20, 1885, respectively, and the other appeals herein specified.

It appears that the goods in question being advanced in value on
42 appraisement, more than 10% were the subject of reappraisements, and that the general and merchant appraisers who conducted such reappraisements sustained the advance in value, thus subjecting the goods to the additional duties prescribed by section 2900 of the Revised Statutes.

The appellants claim that the reappraisement of the said goods (in consequence of which the alleged excessive duties were assessed) were illegal and void for several reasons. Among which may be mentioned, because the merchant appraiser was not an importer and a disinterested or indifferent person, but a manufacturer in America of silks, because neither the importers of said goods nor there agents were permitted to be present during the said reappraisements nor allowed to introduce witnesses therein in support of their invoiced valuations, and because the reappraisers refused to permit the importers to see the witnesses or testimony introduced on such reappraisement, etc.

43 The general appraiser, who in conjunction with the merchant appraiser, conducted such reappraisements, reports with regard to each of the cases in question that as to all of the allegations and charges of the importers which are material to the question which are involved in these appeals the same are wholly without foundation or truth; that in fact the proceedings on the reappraisement were, to the best of his knowledge and belief, regular and in accordance with law, and that the importers were allowed all privileges to which they were entitled. In view of such report of the general appraiser, the Department sees no occasion for its interference in the matter, and it therefore affirms your decision in assessing duty upon the values returned on such reappraisement.

(Signed) C. S. FAIRCHILD,
Acting Secretary.

It was conceded that this action was commenced on the 23d day of June, 1886.

44 The receipt of the United States attorney, dated June 22d, 1886, showing the payment of the additional duty upon these two importations to that date, as follows: in respect to the Normandie, additional duty $326.50, penal duty $1,099.60, interest $113.09, total $1,599.19; in respect to the Belgenland, additional duty $173.00, penal duty $355.40, interest $56.55, total $584.95; the grand total of both being $2,124.14, and it was conceded that such amount was paid by the plaintiffs. The endorsements upon the face of the entry by the Normandie and by the Belgenland showed that upon the 23rd day of June the collector of customs received this money from the United States attorney.

Plaintiffs' counsel then read in evidence the letter of the Secretary of the Treasury given to Mr. A. J. Perry, United States general appraiser of New York, under date of June 9, 1885, being No. 6957 in Synopsis of Decisions of the Treasury Department.

(6957.) *Reappraisement G.—Merchandise.*

45 TREASURY DEPARTMENT,
June 9, 1885.

SIR: Your attention is called to the instructions of the Department contained in synopsis 2655, and to regulations of 1884, articles 469, 474, 1407, 1416, relating to the method of procedure in reappraising merchandise. The law of reappraisement is precisely the same as that of original appraisement, and there is no authority or justification for the system, which it appears has grown up in your office, of treating a reappraisement as in the nature of a trial in a court of law, wherein the reappraising officers sit as judges and render decisions according to the preponderance of testimony adduced.

The law provides that the merchant appraiser shall be familiar with the character and value of the goods in question, and it is presumed that the general appraiser will have or will acquire such expert knowledge of the goods he is to appraise as to enable him to intelligently perform his
46 official duty with a due regard for the rights of all parties, and independently of the testimony of interested witnesses.

The functions of the reappraising board are the same as those of the original appraisers. They are themselves to appraise the goods, and not to depend for their information upon the appraisement of so-called experts in the line of the goods in question. I am informed that it is the practice to hold reappraisements on certain days of the week within the hours of twelve and three, and that, owing to the number of appeals pending, two or more cases are often heard at the same time by different merchant appraisers, all acting in conjunction with the general appraiser; that importers and witnesses are permitted to throng the general appraiser's office, in whose presence the conclusions of the appraising board are often announced, and that if such conclusions are not satisfactory to the importer he is allowed to protest and reargue the case, with a view to
47 a modification of the finding, in which he is often successful.

This is plain that all this is a wide departure from the methods of reappraisement contemplated by the law and regulations, and must necessarily result in injury to the revenue and general demoralization among officials and importers. The local appraisers are expected to do their full duty in ascertaining, estimating, and appraising the true and actual market value or wholesale price of imported merchandise at the time of exportation, and in the principal markets of the country whence the same has been imported.

When appeals are taken from the valuation so found it is expected that the general appraiser and merchant appraiser, selected to act with him, will reappraise the merchandise in substantially the same manner as is pursued in original appraisement.

Section 2922 of the Revised Statutes authorizes appraisers to call before them and examine under oath any owner, importer, consignee, or
48 other person, touching anything which they may decree material in ascertaining the true market value or wholesale price of any merchandise imported. It is by this law that appraisers are authorized to summon witnesses, but there is no authority for the public examination of such witnesses, or their cross-examination by importers or counsel em-

ployed by such importers. The appraising officers are entitled to all information obtainable concerning the foreign market value of goods under consideration, but such information is not public property. It is due to merchants and others called to give such information that their statements shall be taken in the presence of official persons only. It must often occur that persons in possession of facts which would be of value to the appraisers in determining market values are deterred from appearing or testifying by the publicity given to reappraisement proceedings.

Article 1416 of the regulations enjoins appraisers to give cour-
49 teous and due attention to the explanations and statements of importers in person or by representative, relating to the subject-matter under investigation, but they are to limit the privilege so accorded to one person in each single case of reappraisement, to receive statements of fact, and to require all facts to be stated concisely and not argumentatively.

This regulation has been so construed that attorneys at law and custom-house brokers have appeared and acted as representatives of the importer on reappraisement. Such a construction is erroneous. The representative of the importer in such cases should be his employé or salesman, some person belonging to his house familiar with the facts touching the subject-matter under consideration. There is no office here for the lawyer or custom-house broker, and such persons, as well as all others not officially called before the appraisers, should be excluded.

This Department expects that all appraising officers, including
50 the general appraisers, will coöperate in all proper measures for the suppression of undervaluations and the just and uniform appraisement of imported merchandise, to the end that the tariff laws may be strictly enforced, and fair and honorable merchants protected from loss by the dishonest practices of unscrupulous importers.

Very respectfully,

DANIEL MANNING,
Secretary.

MR. A. J. PERRY,
United States General Appraiser, New York City.

The plaintiffs' counsel then called as a witness James H. Hamm, who testified that he was a custom-house broker, and had been for twenty-four years, at the port of New York; that he was acquainted with the plaintiffs and represented them in the matter of the two entries in suit; that he obtained a delivery order for the goods mentioned in the entries after he had paid the additional and penal duties to the district attorney;
51 that the same had been previously refused at the custom-house, which is the usual place for the demand of such goods, on the ground that there was a penalty due that had not been liquidated, and that the entry had to be liquidated and the money paid before the plaintiffs could obtain delivery of their goods; that as soon as the money was paid and turned into the cashier's office and the proper records made on the papers, the delivery orders were given, and the goods delivered. After the money had been paid, I followed it up from the district attorney's office

and insisted that on the 22d the money should be sent down to the custom-house. On the 23d the money was sent down to the custom-house, and the proper entries were made on the invoice and entry showing that the additional and penal duties and interest had been paid. I then obtained an order for the delivery of the goods, and handed it over to the carman who got the goods. The delivery of the goods was refused
52 until the additional and penal duties and interest had been paid, and such payment was made the condition of their delivery.

The plaintiffs' counsel also produced as a witness GEORGE V. BROWER, United States appraiser of the port of New York, who produced a copy of a protest by plaintiffs against the reappraisement, which is marked Ex. 16, for identification; also two depositions, which are marked Ex's 17 & 18, for identification; also the stenographer's minutes relating to the "Belgenland" and the deposition, which are marked respectively for identification Ex's 20 & 21; also the record of reappraisement in the case of the Normandie, which was offered and put in evidence by the plaintiffs' counsel, and marked Plaintiffs' Exhibit No. 15; also the record of the reappraisement in the case of the Belgenland, which was offered and put in evidence and marked Plaintiff's Exhibit No. 19. The plaintiffs' counsel also produced as a witness GASPAR C. BARNETT, who testified that he resided in the city of New York; that he was con-
53 nected in business in the dry goods trade with the plaintiffs in this suit, Iselin, Neeser and Company, and had been so connected for sixteen or seventeen years, and as their representative had charge of the two importations in question from the time of the arrival of the goods and the invoices and bills of lading with them in all the phases that they went through; that he appeared before the general appraiser with reference to the question of reappraisement; that he, on behalf of the plaintiffs, delivered to the general appraiser at the time of the reappraisement a written protest which is the same paper heretofore produced and then marked "Ex. 16, for identification." This paper was put in evidence and marked Plaintiffs' Exhibit No. 16.

NEW YORK, *Aug. 12th*, 1885.

In the matter of the reappraisement of the silk goods embraced in invoice No. 9737, imported by the steamer "Normandie," May 25th, 1885.

54 To Mr. GEORGE V. BROWER, general appraiser of port of New York, and Mr. JAMES BOGTH, merchant appraiser herein:

You will please take notice that the undersigned respectfully demand and insist that they may be present during the reappraisement herein, and that they may personally, as well as by their employees and their agents, and also by witnesses desired to be furnished, fully informed upon the subject-matter, present testimony as to the true dutiable value of the importation herein.

And further, that they may have reasonable opportunity to cross-examine witnesses and to test and disprove testimony to be introduced against them alleging the incorrectness of the invoice; and further, that the merchant appraiser acting herein is not qualified for such action under the statutes.

The defendant's counsel objected to the admission of the said paper in evidence as incompetent, irrelevant, and immaterial, which objection
55 was overruled by the court, to which ruling the defendant excepted, and which exception was allowed by the court.

Q. Now, will you please state what occurred at those reappraisement proceedings as known to you?

A. I attended the public store in pursuance of a notice received from the general appraiser that the reappraisement in this case would take place on the 6th day of August. The case was first fixed on the 6th day of August; it was adjourned over to the 7th; from the 7th it was again adjourned until the 12th. We delivered our protest in writing and orally both to the gen. appraiser, and made the request that we should know if there was any evidence adduced in the case and who the witnesses were. We were not allowed to know; we were not allowed to see any testimony, if there had been any, for which we asked. We asked if we might have the privilege of having witnesses summoned to testify in the
56 case who we believed to be conversant with the goods and to know what they were worth at the place they came from at about the time they were shipped. We were told that couldn't be. We asked if we might remain and be present during any other proceedings that they were going to take as related to our invoices, and we were informed that the orders of the Treasury Department were such that we could not be allowed to know anything about the case at all, and then we were politely waived out of the room.

The court states that this evidence is received subject to the objection and exception of the district attorney.

The witness further testified that he asked the right to be present by counsel on such reappraisement, which right was denied.

"Mr. Brower stated some general terms of the letter of the Secretary of the Treasury dated June 9, which was to the effect that we only had a right to be present, and I distinctly remember that I had some
57 little discussion with Mr. Brower relative to that case and another as to the interpretation of the word 'present.'"

"By the COURT:

Q. Did you call his attention to it or he yours?

A. I called his. I called his attention to the fact that the term 'present' might simply mean that I was to be let in at one door and thrown out at another. It didn't seem to cover the case."

The witnesses' attention being called to the letter of the Secretary of the Treasury, No. 6957, under date of June 9, 1885 (Synopsis of decisions of the Treasury Department, which has already been read in evidence in this case), he stated that that was the letter he supposed that Mr. Brower referred to.

Q. State exactly what occurred at that time upon the reappraisement of the importation by the "Normandie."

A. Mr. Neeser, as well as Mr. Vogel, one of our gentlemen, and myself were there, and we made a statement about the goods. They
58 denied us these other privileges that I have referred to. We stated that we knew our goods to be properly invoiced, and that they were entered at prices at which they could be bought and sold on the

other side, and that they were so being treated at that time on the other side to other countries than America. And if they would give us opportunity we would undertake to prove such to be the fact. They took our statements and that is all we knew about it. We don't know what else they did.

Q. Did you ask to stay longer?

A. Yes, sir.

Q. What answer was made?

A. We were told we couldn't by the general appraiser. The merchant appraiser, Mr. Booth, was present at that time. I am not so certain that all that I have recited took place in his presence; some of the conversation was held with Mr. Brower singly in his office, where the other gentleman was at the time appointed for the reappraisement. Mr. Booth was within hearing, if he was listening.

Q. Were your goods there present?

59 Mr. PLATT. I object to that question as immaterial, irrelevant, and not competent.

The COURT. He may answer that.

A. I don't know, sir. I didn't see them.

(To which ruling of the court defendant's counsel excepted; which exception was allowed by the court.)

Q. Was there any sample of your goods there present?

A. I couldn't say. The witness further testified that he knew Mr. Booth, and had known him for some years; that Mr. Booth was engaged in the manufacture of silk goods at Paterson, New Jersey, of the same general description as those imported by the plaintiff upon the Normandie; that there was a competition in this market or in the United States between such goods as were imported by the Normandie by the plaintiffs and those manufactured by Mr. James Booth.

(This testimony was taken subject to the objection and exception
60 of the defendant's counsel, which exception was duly allowed by the court.)

The witness further testified that he appeared upon the reappraisement concerning the importation by the Belgenland on September 9, 1885, when there were present the general appraiser, Mr. Brower, and the merchant appraiser, Mr. Roberts; that as soon as he ascertained that Mr. Roberts was to act as merchant appraiser he requested that the case be adjourned, so that he might have an opportunity to make protest to the collector of the port, and a request that somebody else should be appointed to act as merchant appraiser in that case. The adjournment for such reason was denied. That he then made a formal protest orally to both of those gentlemen who sat together against Mr. Roberts acting in the matter on the ground that he did not consider him as a competent and discreet merchant, conversant with the character of the goods at the place of shipment; that he asked the privilege of seeing any testimony
61 they had in the case, which they told him he couldn't see; that he asked them if they had any testimony, and they declined to tell him whether they had or not; that he asked that they would summon some witnesses.

Q. Did you mention any names?

A. I believe I did call off some names. My impression is that I requested to be summoned Dunham Buckley, Arnold & Constable, E. S. Jaffray, Luckemeyer & Schaeffer, and Passavant. I know I mentioned the names of houses of that character that dealt in these goods. I asked that the examiner, the man who advanced the goods, might be summoned to give his evidence in regard to them, that was Mr. Fenton, to allow him to state his reason for advancing the goods and what he knew about it.

The witness further testified that those requests were denied; that he asked that he might be furnished with a copy of the proceedings by the stenographer who took them; that Mr Brower told him
62 that he couldn't have them, and then he was told to get out.

Q. Did you make any statement with reference to the value of the goods?

A. Yes, sir.

Q. Did anyone else in your behalf make such statement?

A. No, sir; not that I know of.

Q. You say you were told to get out; what was said?

A. Well, that was all; Mr. Barnett and I was excused.

Q. Did you ask to be permitted to remain?

A. Yes, sir.

Q. Was any reason given why you should not?

A. Well, the reason Mr. Brower gave me on other cases; that is, he had a letter from the Secretary of the Treasury of June 9, 1885, under the construction of which he didn't think it was possible for him to allow me there. I asked the right to be represented by counsel, which was also denied.

Q. What do you know, of your own knowledge, concerning the interest of Mr. Roberts in the decision of this question?

63 A. Well, I know that Mr. Roberts has, so to speak, the run of the division in which——

Q. What do you know of your own knowledge—what facts?

A. Well, Mr. Roberts has expressed himself to me personally in conversation at different times, in language showing strong prejudice against importers generally of silk goods, and has specifically stated that he thought they were, most of them, foreigners in league with foreigners on the other side, for the receipts of merchandise here in this port at a price a great deal less than the goods were worth on the other side, and it could only be through a combination that they could get the goods in that way, and he thought the whole thing was a fraud.

Q. Had he stated that to you before the time of this appraisement?

A. Yes, sir; in conversation at different times in the general appraiser's store.

Q. Did you at any time offer to the general appraiser or to the merchant appraiser a written communication concerning your de-
64 mands in this suit.

A. Yes, sir.

Q. Where is that?

A. I haven't got it.

Q. When was it?

A. Well, it must have been shortly after the reappraisement or might possibly have been the same day, or the day following. It was some time

before he got a return of the invoices, and before we knew what they had done or what they had concluded at the reappraisement.

Q. Can you recollect any more distinctly or state any more distinctly and definitely than you have the particular things what you said and did at the reappraisement of the goods by the Belgenland?

A. Well, I was governed in my action—what I did there was entirely from a paper which I had, and which paper I gave to Mr. Brower. My action was based entirely upon that paper, and what I said was taken right from that paper, and I gave the paper to Mr. Brower, so that there would be no mistake or misapprehension of what I did say or what I didn't say.

65 The witness further testified that he got that paper from Bang and Stetson, the plaintiff's attorneys, sometime before the reappraisement, and that this paper instructed him what to do at the reappraisement, and that he followed out the steps exactly, one after the other.

Plaintiff's counsel offered in evidence depositions taken upon the reappraisement, being the depositions produced by the general appraiser under a subpœna by the plaintiffs and heretofore marked Exhibits 17, 18, and 21 for identification.

The defendant's counsel objected to their introduction in evidence as irrelevant, immaterial, and incompetent, being the testimony of the witnesses taken before the reappraisers.

The court overruled said objection and received the depositions in evidence, which were marked respectively Plaintiff's Exhibit Nos. 17, 18, and 21, to which ruling the defendant's counsel excepted, which exception was allowed by the court.

66 Plaintiff's counsel called as a witness Henry A. Van Liew, who testified that he was a manufacturer of American silk at No. 617 West Fifty-second street, New York city, that he knew James Booth, that he was acquainted with the general character of silk dress goods, that there is competition in this market for the sale of American or domestic silks as against the goods represented in this importation, that there is an interest on the part of manufacturers of such domestic silks with reference to the valuation in foreign silk.

At the close of the plaintiffs' testimony defendant's counsel moved for a direction of a verdict for the defendant on the ground that the plaintiffs had not proved facts sufficient to entitle them to recover.

After an extended argument upon this motion, the court said:

The COURT. "I think with reference to this case, after hearing the very careful argument by the assistant district attorney (a good part of which was heard last Wednesday and the rest of it this morning) and after

67 looking at the books, that I should not be quite justified in taking this case from the jury as the evidence now presents it. I do not think that the last point made would be tenable; that if the reappraisement fails the whole appraisement stands as it was originally, because I think when a reappraisement is applied for and the party takes steps to entitle him to it the reappraisement would be all that would be left; that the other one would be gone, and the reappraisement would be all that would be left. I do not think, if the reappraisement fails, that it is permitted to go back upon the appraisement. If that was the effect, why all the appraising officers would have to do would be to have something illegal about the

reappraisement and then fall back on the old appraisement, and then the importer couldn't protest as to the value, and he would lose the whole. I don't think that would be right.

68 As to this letter of the Secretary, I think that, in general, that is all right enough. These reappraisers are not a court to sit and hear witnesses and counsel and all that. It is plain enough that that isn't it. They are to appraise, which means on view, I should think—that is, look at the goods—and that they may take any other course they see fit to get information about it. It does seem to me that when the importer takes an appeal and calls for reappraisement he would have the right to be there enough to see that the appraisers had his goods, and to see what they looked at, and be there at the time when they looked at them, and to call attention to any of the qualities of the goods. I think he would have the right to do that, and I am not now prepared to say or to indicate a ruling as to whether he would have the right when they do, in the exercise of their discretion, take testimony in writing applicable to the value of the goods, and make that a part of their basis of reappraisement—whether he

69 would have a right to see that, to see what the appraisers saw fit to take.

I am not prepared to say that he wouldn't have the right to do that. I do not say whether he would or wouldn't. I think that would be proper to be disposed of in giving the case to the jury, and I think under this case, in 110 U. S. Reports, all we have got to do, as it seems to me, is to see whether the importer got a reappraisement, such as the law gave him, and if he was deprived of that then he would have some claim for the jury to give him something, otherwise not. Everything that was within the fair scope of the reappraisement will be presumed to be done right.

Now, as I regard the effect of this testimony of Mr. Barnett, it may be (of course this is a trial by jury, and I don't wish to indicate any view as to the effect of the testimony)—it may be that the jurors will think that the importers were cut off from a fair right to be there when their goods

70 were examined. I don't mean when the appraisement was made, for, of course, he wouldn't have the right to take part in the deliberation. That isn't it. But when they examined the goods—when they had the view (and the appraisal of the goods was to be on view, or certain parts of it)—why I think that the importer would have a right to be there to see that they did view the goods. It may be on this part of it that the jury would think that he was cut off from that right.

Now, I think if I should hear any further argument that it would still leave me with the impression that the jury ought to pass on something there is here, to take the case just as it is.

Of course, the court can't say that as we should try the questions of fact, as we should view this evidence, it should be thus and so; we can't do that. If there is any evidence tending to show that they didn't

71 have a reappraisement, why it ought to go to the jury, and it ought to go without any expression of opinion from the court. That is the fairest way.

Therefore this motion to direct a verdict absolutely now, at this stage of the case, will have to be denied.

Mr. PLATT. Will your honor allow us an exception?

The COURT. Certainly; we will hear any evidence that you have got, directed right to these points that have been opened.

The defendant's counsel produced as a witness GEORGE V. BROWER, who testified that he was the general appraiser at the Port of New York, who acted on the reappraisement on the importation by the Normandie, with James Booth, of Hamil and Booth, silk manufacturers, as the merchant appraiser associated with him; that the reappraisement proceedings took place at the public store, at the office and rooms occupied by
72 the general appraiser in the city of New York; that on such reappraisement Mr. Gaspar C. Barnett represented the plaintiffs and appeared before the reappraisers; that Mr. Barnett came in the room and handed the merchant appraiser either this paper (Exhibit No. 16) or a similar one to this, and then sat down and gave a statement in relation to the plaintiffs' merchandise; that he gave his reasons why, in his judgement, the merchandise should not be advanced beyond the valuation on the entry; that he made a lengthy statement in relation to the matter; that the reappraisers inquired if he had anything further to offer in relation to it; that he said no, but he wished to be present during all the deliberations; that they denied him that privilege and asked him if he had anything further to offer, and told him if he had they would be pleased to hear it; if he had not, then they should ask him to retire; that he had no witnesses with him at that time, and did not produce any; that the
73 plaintiffs' goods, the merchandise in question, were examined in the offices used and occupied by the general appraiser at the public stores, the general room in which the reappraisers held their formal proceedings; that there is a record upon the return of the examination of that merchandise, one made by George C. Andreas of having examined it, and another of George E. Flietman; that Mr. Booth, after taking the oath of office, which prescribes that he should examine the goods, reported to the witness; that they then went into the adjoining room where the goods were laid out on tables and exposed to view for the purpose of examination by the witnesses and merchant appraiser and general appraiser; that after the inspection and examination they came in and he thinks brought the samples with them of the goods into the adjoining room, and then sat down and called for Iselin, Neeser & Co. to represent their
74 case and hear what they had to say in relation to the reappraisement; that Mr. Barnett appeared in answer to that summons and made a statement of his case.

The witness further testified that he thought he had samples of most all the goods there taken at the time in court with him; that they were brought from the public stores, and were taken from the goods at the time of the reappraisement and were filed away; that Mr. Barnett did not ask at the reappraisement to see the goods; that the goods were open for inspection and were on view; that Mr. Barnett made no suggestion that the goods present were not the plaintiffs' goods or anything to that effect, and never made any suggestion of that kind, nor any objection to that effect; that those samples were cut off the plaintiffs' goods at the public stores and were on inspection and on view; that the cases of goods were marked and those samples were cut from the cases as marked; that they were
75 the goods under reappraisement. They are put away and a tag attached to them and filed away, and they are kept by the general

appraiser so long as in his judgement they would be valuable as evidence of their intrinsic value, and then if there is any question on the protest or appeal they are filed away to await the event of that action.

The witness further testified that Mr. Barnett talked with the reappraisers on the goods that were under reappraisement, which were the goods of his firm, and were present; that Mr. Barnett stated orally that he desired to see the evidence that had been taken and handed in a written request or paper (Plaintiffs' Exhibit No. 16) before he said anything; that he said he was asking certain legal rights, and he had been instructed to do so; that the witnesses Andreas and Fleitman were subpœnaed by the general appraiser; that they were importers of similar goods;
76 that it was customary for the general appraiser to subpœna all the parties who are named as importing similar goods; that of the witnesses subpœnaed two appeared, Messrs. Fleitman and Andreas.

The witness further testified that he stated to Mr. Barnett with regard to the examination of other witnesses that many of the witnesses who came to give their testimony would not come if they had to be cross-examined and if their testimony had to be criticised, as they were in the same business, and that the reappraisers would be debarred from getting much testimony on that account; that it was not proper to have the testimony examined unless the parties themselves so desire to have their testimony appear; that their testimony was not public property; that the appraisers do not cross-examine these witnesses themselves; they give them printed blanks and make an inspection of the goods; after having made that inspection of the goods, they put in their prices, placed over their names and they are examined by the general appraiser; that no cross-exami-
77 nation takes place of these witnesses. The witness further testified that in the case of the reappraisement of the goods by the Belgenland Mr. R. S. Roberts, of the firm of Roberts, Cushman & Co., importers of similar merchandise, was the merchant appraiser who acted with him; that he was one of the oldest of the New York merchants; that in that case several witnesses were summoned, and only one responded; that he made his inspection and gave his value; that Mr. Barnett appeared and requested to have a statement taken down. His stenographer was called in and Plaintiffs' Exhibit 20 appears to be a copy of the stenographer's minutes of what took place at that time; and after the statement had been made of the formal matter on the papers, then Mr. Barnett, who was present, went into the merits which the plaintiffs had in the controversy; that the samples of the goods were in the office in the building and
78 the goods themselves, the merchandise, were then in an adjoining room open to inspection of the witnesses and of the merchant appraiser, and the general appraiser; that the room opens from the general appraiser's office and is part of his suite of rooms; that Mr. Barnett made a statement of the valuation of these goods. He said he thought the entered value was the correct one; he didn't think the goods ought to be advanced from what the plaintiffs had entered them. That the reappraisers stated to Mr. Barnett that the goods were very low indeed and below the market value of these goods in their judgement; that in the same case the examiner was called down and was examined at length in relation to them. The examiner on the "Belgenland" was Mr. Fenton and on the "Normandie" was Mr. Corbett. Mr. Barnett examined the examiner on his

appraisement as to why he had advanced his goods, and the examiner gave his reasons for so doing; that after he had been heard, the re-
79 appraisers asked Mr. Barnett again if he had anything further to offer, and he said no, but he would like to remain during the rest of the deliberation; that they then told Mr. Barnett that they couldn't permit him to do so; but that if he had anything further to offer they would be glad to hear it; that during the reappraisement of the goods imported by the Belgenland, the goods were in the adjoining room. These goods are all in the public stores and on the day of reappraisement are brought up to the general appraiser's rooms and opened by the openers and packers and exposed to view; samples are then cut off the larger pieces for use by the reappraisers. Mr. Barnett made no suggestion or question at that time as to the identity of the parties' goods; no one else made any suggestion. The samples were taken from the parties' own pieces; the cases were marked and there was no question raised by anybody as
80 to the identity of the goods; if there had been the reappraisers certainly would not have gone on with the reappraisement of the wrong goods.

Samples were given to the witnesses to examine them. Mr. Boettling was one of the witnesses. The reappraisers examined the goods themselves before coming in to hold the reappraisement. That while Mr. Barnett was there he did not ask to handle any of the samples himself; there was no question raised as to their identity, and no complaint made at that time or any other time by Mr. Barnett to the reappraisers that they had not examined the right goods, and no suggestion of that kind was ever made by him. Mr. Barnett cross-examined the examiner of the goods; put him through a course of questions; that Mr. Barnett made a statement, which his stenographer took down, and that this paper (Plaintiffs' Exhibit 20) is, he presumes, a correct copy of that statement, except in one par-
81 ticular, namely, that it states that a request to summon witnesses was made and denied. He says that no one ever made a request for witnesses to be examined that he had denied; that Mr. Barnett asked that the case might be adjourned that he might have an opportunity to present to the collector of the port a written protest against the appointment of Mr. Richard S. Roberts as merchant appraiser is this case. The adjournment for the reason stated was denied by the general appraiser. That Mr. Barnett then protested against the refusal, and protested against the appointment and service of Mr. Richard S. Roberts as merchant appraiser is this case, on the ground that said Richard S. Roberts was not a discreet and experienced merchant familiar with the character and value of the goods in question in the principal markets of the country whence imported, stating that he desired to furnish to the general appraiser
82 a list of witnesses to be called in support of the plaintiffs' invoices, and wished to be present when their testimony was taken; that he desired to summon and examine the witnesses on behalf of the Government. The general appraiser denied the importer's right to examine the witnesses, and declined to summon witnesses selected by him, but gave him the right to be present or to be represented by his agent on the reappraisement and to make a statement of his case.

The witness further testified that Mr. Barnett did not offer to produce any witnesses whatever, but he placed such a request in the hands of the

reappraisers in a formal manner; that he did not have any witnesses with him and did not offer to call any; that on the reappraisement of the importation by the "Normandie" there were three meetings; that Mr. Barnett appeared on the 12th; that that was the last meeting, and the meeting at there was final deliberation and determination by
83 the reappraisers that there was, on the reappraisements of the importation by the Belgenland, but one meeting of the reappraisers, and Mr. Barnett was present at that.

From the best of his recollection the witness states that he refused to allow Mr. Barnett to see the depositions of the witnesses.

Upon cross-examination by plaintiffs' counsel, Mr. Brower, further testified that he became general appraiser on the 7th of July, 1885; that the letter of the Secretary of the Treasury, No. 6957 (synopsis of decisions), under date of June 9, 1885, addressed to Mr. A. J. Perry, was called to his attention shortly after he assumed his duties as general appraiser by Special Agent Powers; that he read the letter carefully then.

Q. Had any subsequent or definite instructions been received by you after the date of this letter and before you conducted the reappraisement of the Normandie case?

84 Mr. PLATT: I object to that as irrelevant and incompetent.

Which objection was overruled by the court, to which ruling the defendant excepted; which exception was allowed by the court.

A. No, sir.

Q. Upon that date did you regard the instructions of this letter as instructions under which you were acting?

Mr. PLATT. That is objected to as irrelevant.

Which objection was overruled by the court; to which ruling defendant excepted, which exception was allowed by the court.

Answer. The question of that letter did not come up on the reappraisement whatever. So far as that might affect any reappraisement I certainly did. In the case of the importation by the Normandie the importation was called on the 5th and adjourned until the 7th of September, 1885. The merchant appraiser was there on the 7th; took samples and
85 made an examination, and the final hearing was on the 12th.

As general appraiser I had charge at the reappraisement from the beginning and caused a notice to be sent to the importers, Messrs. Iselin, Neeser & Co., and subpœnaed a number of witnesses.

Q. Who furnished the list of witnesses to which you refer?

A. The appraiser.

Q. Who was that?

A. Mr. McMullen.

Q. I ask you if this face paper, as it is called, giving a list of witnesses, came to your possession, to your personal possession?

A. Yes, sir; I could not say it was ever in my possession until the date of the first hearing, on August 6th. That is a paper that we place on the face of our records and note in it the witnesses whom we summon, and note upon it the importers whom we wish to hear, and parties familiar with the goods whom we wish to subpœna.

Q. And this is the ordinary face paper that was used in the
86 case of the Normandie?

A. Yes, sir.

Plaintiffs' counsel then offers the same in evidence. The defendant's counsel objected to its admission as irrelevant and incompetent, which objection was overruled by the court; to which ruling the defendant's counsel excepted; which exception was allowed by the court. This face paper was received and marked Plaintiffs' Exhibit No. 15. The witness further testified that this paper contained an endorsement on one side, "Notified August 5th, 1885," in the handwriting of one of the witnesses' clerks; that he did not know of his own knowledge how many of the witnesses named in the paper were summoned.

The next entry is: "Examination, Thursday August 6th, 1885, at 11 a. m."

The witness testified that he was present on the 6th and on the 7th of August; that on the 7th the merchant appraiser was sworn; that the examination did not proceed on the 6th of August; that the mer-
87 chant appraiser was not there on that day and had not been sworn, and nothing was done in these proceedings before the swearing in of the merchant appraiser, who appeared on the 7th of August; that the case was adjourned from the 6th to the 7th, and again adjourned from the 7th to the 12th of August; that this witness makes these statements from the record, and not from his own recollection; that this reappraisement was held in the front room of the public store in the general appraiser's office at the corner of Hubert and Washington streets, New York City; that it is a large room with a table for the witnesses and for the merchant appraiser and general appraiser to sit and hear the cases; the merchant appraiser and general appraiser sat there on the day in question; there were no other reappraisements going on at the same time; the witnesses simply came in, handed in their affidavits, swore them, and retired.
88 There are three rooms adjoining, running right along, connecting together with doorways. The witness thinks the middle room doesn't have any door separating that. The front room is the office of the general appraiser; in that sense it is a public room. The other rooms are there simply for the purpose of those who are interested in the merchandise, and for the examination of the merchandise; and in those rooms the goods are kept—the goods which are under reappraisement.

Q. Could any one who chose go into this room?

A. I think not.

Q. Whose consent would it require?

A. It would require, I think, if I am not mistaken, a consent to enter the public stores; persons must be interested before they are permitted to enter the public stores at all. After they have got into the principal room there is a large room where my clerks are, opening into the public
89 room where appraisements are held, and then a large hallway where the goods are kept for examination. Parties coming to examine goods come into the office, get one of these blanks, go out into the hallway into this room, and make their examination. No one could get these blanks unless they were there for that purpose; except with the blanks no one could get into that room, I think, unless they had some connection or some business in that department.

Q. Do you allow importers to go into these rooms?

A. Only such as have reappraisements on hand, or who are called for the purpose of the examination of the goods. The goods named in the

invoice by the Normandie on those days of the reappraisement, the 7th and 12th, were in this room adjoining my room. I would say,
90 that on the majority of reappraisements we have the samples before us, and discuss them with the importer and with the examiner. Now, whether it occurred in this case I am not prepared to say. The first examination that Mr. Booth made of these goods, I think, was on the 7th of August. I can not say that it was in the presence of the importer; I haven't any recollection of it.

With reference to Mr. Fleitman and Mr. Andreas, the witnesses, they examined the goods on the 12th according to the dates of their affidavits. I don't know whether they did that in the presence of any representative of Iselin, Neeser, & Co., but I think not.

Q. You think it was by themselves?

A. I should judge so; that was our rule.

Q. In this very room?

A. In this very room.

Q. Not in the room referred to as the front room?

A. Not in the room referred to as the front room.

91 When Mr. Barnett was called, in the case of the Normandie, Mr. Booth was sitting at the table with me, and before he left we sent for the examiner who had originally examined the merchandise, and he came there also; that was Mr. Corbett. Mr. Booth took the oath and examined the case of goods upon the 7th of August. Witnesses were summoned and importers were summoned to appear on the 12th of August. On the 12th of August two of the witnesses who had been summoned, namely, Mr. Andreas and Mr. Fleitman, made an examination of the goods in the room that was adjoining the front room, and Mr. Booth and I made another examination of those goods on the same day, the 12th, before the hour at which the importer was called in to appear before us. The importer was called to appear before us in the front room. Neither of the plaintiffs nor any of their representatives were in the room where the
92 goods were with Mr. Booth and myself at that time. The witnesses are subpoenaed to come at the same time as the merchant appraiser and the importer; if they answer their subpoenas they will appear together. The witnesses will go in that room where the goods are and examine them, and there is a notice that the importer is not permitted to go in with the witnesses.

Q. Was that notice put there by your direction?

A. It was there before I came.

Q. And it is continued by your permission?

A. Yes, sir.

Q. And they are not permitted to enter?

A. Not with the witnesses.

The witness on cross-examination further states that he recollects that Mr. Barnett came into the room and handed him a certain paper (the witness referring to paper dated August 12th, 1885, called a protest) and after handing him the paper Mr. Barnett sat down in a chair and
93 stated to Mr. Booth and the general appraiser the reasons why he thought his invoices should not be advanced and why the appraisement should not be sustained. The witness remembers that Mr. Barnett talked a good while there. Mr. Barnett said that he had been instructed

by counsel to give the witness that paper. It was a formal act. The witness read the paper through at the time, and filed it with the papers.

Q. He says (in this paper), "You will please take notice that the undersigned demand and insist that they may be present during the reappraisement herein." You understand that to be a demand to be present, don't you?

A. Yes, sir.

Q. He says further, "And that they may personally as well as by their employees, their agents, and also by witnesses, desired to be furnished, be fully informed upon the subject-matter, present testimony
94 as to the true dutiable value of the importation herein." You understood that did you not?

A. Yes, sir; and I will say to you that I accorded him the right to subpœna witnesses to give us all the light he could.

Q. You accorded that to him?

A. Yes, sir.

Q. Then and there?

A. Then and there; yes, sir.

Q. Do you recollect the language used?

A. I can not recollect the language.

Q. How are witnesses produced before the board?

A. By subpœna.

Q. Signed by whom?

A. The general appraiser.

The witness further testified: I accorded him the right to subpœna witnesses to give us all the light he could, then and there. Witnesses are sometimes brought there by importers for the purpose of giving testimony and a blank is given them and their testimony is taken. The importers bring these lists of witnesses they wish us to subpœna; that is to say
95 that if they bring a list of a dozen, or a half a dozen, we always subpœna the most reputable men that they give us. I do not recollect that on this day I told Mr. Barnett I would give him subpœnas, but I will mention this fact, that since I have been general appraiser of the port of New York there has not been an application made to me for witnesses that has not been granted, and I made no deviation in this case.

Q. Then you undertake to say as a matter of fact that you recollect, independently of the course of business, that upon this particular day you told him you would give him the subpœnas?

A. Yes, sir; to the best of my recollection.

Q. He further says in this notice, "and, further, that they may have reasonable opportunity to cross-examine witnesses and to test and disprove testimony to be introduced against them alleging the incorrectness
96 of the invoice." Did you understand that?

A. I would deny that.

Q. And you did deny that on that day?

A. I did deny that.

And the notice proceeds, "and, further, that the merchant appraiser acting herein is not qualified for such action under the statute." Did you understand that?

A. I have nothing to do with the merchant appraiser.

Q. You didn't recognize that as a proper objection?

A. The protest must be filed with the collector. I am simply general appraiser, and must sit with the man sent me. I could not sit on the qualifications of a merchant appraiser. .

Q. I am very well aware of that, and therefore you did not grant an adjournment?

A. I will say that if a man makes a protest against a merchant appraiser before a hearing I always grant an adjournment.

Q. This paper presented to you was filed as an official paper in the matter, was it?

A. As a part of the record of the proceedings.

97 Q. And did you cause this indorsement to be put upon it immediately?

A. I should say that I did.

Q. Upon that day?

A. To the best of my recollection.

Q. Intending thereby to make a record of your action. "Importers were present and made a statement of facts in relation to their invoice?"

A. So far as that explained it it does.

Q. This request, or application, of Mr. Barnett's calls for four or five different rights, viz: the right to be present, the right to examine witnesses and have them subpœnaed, the right to cross-examine witnesses, and it objects to the merchant appraiser. Your record of your action is confined to this memorandum: "Importers were present and made a statement of facts in relation to their invoice." Now, how do you explain that no record was made of your assent to any of the three requests?

98 A. Do I understand the counsel to say that there are four propositions made therein?

Q. Yes.

A. The first proposition is that he may be present?

Q. Yes.

A. And the second proposition is what?

Q. The second proposition is "That they may by witnesses desired to be furnished present testimony."

A. Well, I will say to you that on all these propositions, with the exception of not cross-examining witnesses, and of an adjournment that was asked for in that way, a demand simply filed in that formal way, I would not grant an adjournment on account of objection to a merchant appraiser with no protest filed, nor would I consent that he should examine or cross-examine witnesses. Out-side of that every request was granted him.

Q. Did you understand me to ask that?

A. I did so, and I am sorry if I am wrong.

99 Q. I am asking you how to explain it, and that having granted all these other requests your written memorandum made at the time shows only that you granted one?

A. I think it covers two, doesn't it, in a measure.

Q. You can see if it does.

A. "Importers were present and made statements of facts in relation to their invoice." Well, I don't think that that states anything more than that they were present. It doesn't state what was denied or what was given him.

Q. That is the only record of your action?

A. All that I see there. I don't generally make a record there of my action.

Q. That is your only explanation?

A. That is all that I have.

In the case of the reappraisement of the importation by the Belgenland counsel for the plaintiffs produced the face paper and offered the same in evidence.

Counsel for the defendant objected to its reception, which objection was overruled by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.

100 The paper was received in evidence and marked plaintiffs' Exhibit No. 26.

On this reappraisement the witness testified that there were present Mr. Boettling, the witness; Mr. Roberts, the merchant appraiser; Mr. Barnett, and the general appraiser; that apart from the record he could say very little except as his memory was refreshed by the record; that to the best of his recollection Mr. Fenton was called down and Mr. Barnett questioned him on this reappraisement; that the general appraiser did not accede to Mr. Barnett's request to be permitted to examine witnesses.

Q. Am I to understand you as denying or as admitting his statement that Mr. Barnett at that time asked leave to subpœna witnesses?

A. If Mr. Barnett asked to subpœna witnesses I know that I denied that request.

Q. Do you know whether or not Mr. Barnett asked that you would subpœna witnesses?

101 A. If he did ask that I granted it. I have been general appraiser since the 7th of July, 1885, and there never has been a request made to me by any importer for the purpose of giving testimony that I have not too gladly availed myself of as general appraiser. I am free to say that I can not remember every particular case, but I have never refused it.

Q. When your stenographer, who was called in, states in his record, "The general appraiser denies the importer's right to examine the witnesses, and declines to summon witnesses selected by him, but gives him the right to be present himself, or by his agent to be represented on the reappraisement and make a statement of his case," you say that your stenographer was wrong?

A. I say that in everything my stenographer was right but in this one instance.

Q. In either of these cases was the importer or any representative
102 of the importer present when the merchant appraiser was examining the goods?

A. I think not.

Q. In either of these cases was the importer, or any one representing the importer, present when the witnesses were examining the goods?

A. Not if I knew it. I don't allow it.

Q. Then your best recollection is that they were not present?

A. I say that I often look in and find them there and I request them to retire, as I don't think they ought to be with witnesses when forming their judgment, and I suppose if I saw them in this case I should have done the same.

Q. Do you remember anything being asked by Mr. Barnett with reference to appearing by counsel upon either of these hearings?

A. Only as I have been refreshed, and I will say that Mr. Barnett never acts in a case but he puts that in always, and I suppose he has had a hundred.

Q. Asked you to do what?

103 A. Asks to be represented by counsel, and then sits down and goes on with the case.

Q. Have you denied it?

A. I have gone on in the "even tenor of my way."

Q. Have you permitted him to appear by counsel?

A. No, sir.

Q. You have denied that?

A. Yes, sir.

Q. Did you show to Mr. Barnett, or any one representing Iselin, Neeser & Co., these depositions of Mr. Andreas, Mr. Fleitman, and Mr. Boettling?

A. No, sir.

Q. Did they ask you to show them?

A. I don't recollect.

Q. Did you refuse?

A. If they asked me without the consent of these gentlemen I should have refused. To the best of my recollection I should say that they did ask and that I refused.

On his redirect examination the witness further testified that at the time Mr. Barnett left the reappraisers the reappraisement had been con-

104 cluded except as to coming to the determination of the valuation, and all the other proceedings had been concluded up to the time that Mr. Barnett had left, so that he was present up to that time.

Upon recross-examination the witness testified that he should say that the depositions of the witnesses had been handed in before Mr. Barnett made his requests, because when they got through with Mr. Barnett the case was about concluded.

The defendant's counsel then produced as a witness, Mr. James Booth, who testified that he was a silk manufacturer, and had been for over thirty-one years; that his place of business was 86 Grand street, in the city of New York, and his manufactory in Paterson, New Jersey; that he was appointed and served as a merchant appraiser on the reappraisement on certain importations by Iselin, Neeser & Co., the plaintiffs, in August, 1885, which reappraisement took place in the appraiser's depart-

105 ment of the public stores in Washington street; that upon such reappraisement Mr. Barnett and Mr. Neeser and two witnesses were present; that upon the reappraisement which was upon the importation by the steamer Normandie witness was sworn first as merchant appraiser, and the goods were all laid out in the sample room that is off the general appraiser's room; they were laid out in pieces; the cases of goods were in the room, and the pieces were taken out of the cases.

The papers that the witness had in his hand represented the cases, and the goods represented the cases they came out of. The two were numbered in duplicate; one piece of goods was taken out of each case. Those cases were numbered; their numbers corresponded with the numbers

upon the return, and corresponded with the pieces laid on the counters for examination. The witness states that he got the janitor to cut
106 him off a few inches of each kind of goods. There were four qualities.

On the reappraisement, on which the general appraiser was present with him, the witness states that two witnesses came in with the depositions, and the figures attached to them, declaring what they considered was right, and they took their affidavit and left them with us. Mr. Andreas was one of the witnesses; he forgets the name of the other gentleman present.

"They handed their depositions in to Mr. Brower and to me. After that we compared them, looked them over, and after that we heard what Mr. Neeser had to say about the case. He was present and also Mr. Barnett, and we asked them if they had any more witnesses to hear on the case, and they said no, to the best of my recollection, or else they would have fetched them, of course. After they had made their statement, Mr. Neeser said he thought he ought to remain there; he said that he
107 wanted to remain there, and the general appraiser, Mr. Brower, said no. He said that he had given in all his evidence, and that he wasn't needed anymore, and that we would confer together, compare the figures, and decide. They had two witnesses, Mr. Andreas and this other gentleman. I don't remember any others. Mr. Neeser got rather excited and insisted on stopping, and said he would protest if he went away, or words to that effect. And the general appraiser spoke and said that he knew his business, and that it was his desire that they should retire.

The witness further testified that he did not remember that anything was said to Mr. Neeser or Mr. Barnett about any Treasury regulations or decisions. There were no other witnesses, except that we had a Mr. Corbett, and an old gentleman named Fenton, down there to examine. There were two of them, and we investigated the matter through them, and went over it, I think, very carefully.

108 The witness states that he rather thinks that Mr. Barnett was present when they were examined. About Mr. Barnett I am not quite sure, but they had a right to, so far as I know. Then we came to a conclusion and that is about all. We did nothing else after we had Mr. Corbett and Mr. Fenton there. After Mr. Barnett left and we had examined Mr. Corbett and Mr. Fenton and these parties, we did not do anything else except settle about the figures.

On cross-examination by plaintiffs' counsel, the witness further testified that he was a silk manufacturer; that he took the samples between the 7th and 12th of August, 1885, to his silk works at Paterson, New Jersey, and that he was a member of the American Silk Association.

Q. What is the object of the American Silk Association?

Mr. PLATT. That is objected to as irrelevant and immaterial.

The COURT. He may answer that.

109 Answer. The object is to assemble together occasionally and compare notes about the leading business matters, and the general interests of the manufacture. Sometimes it is necessary to speak of the tariff.

Q. Are the silks which you are engaged in manufacturing a silk of the same class as this upon which you passed?

A. They are not.

Q. How do they differ?

A. They differ in quality—quite different altogether. They were not to be classed with them in any particular.

Q. Have you any distinct recollection of the time the witnesses, Messrs. Fleitman and Andreas, appeared before the reappraisers?

A. Nothing, only seeing them there, of course.

Q. Do you remember whether you and the general appraiser saw Mr. Fenton and Mr. Corbett before or after seeing Mr. Barnett and Mr. Neeser?

110 A. I think we had them there before us at the time Mr. Neeser and Mr. Barnett were present.

Q. Do you recollect which went away first?

A. I think Mr. Fenton and Mr. Corbett went away first. The last that went away was Mr. Barnett and Mr. Neeser.

Q. Do you recollect whether Mr. Barnett made any request of Mr. Brower at that time?

A. He did not, to my knowledge.

Q. Do you recollect whether or not Mr. Brower made any answer to Mr. Barnett's requests, if Mr. Barnett made any?

A. No, sir.

Q. Do you recollect whether Mr. Neeser made any requests of Mr. Brower?

A. That he should remain.

Q. And that is the only request that you heard?

A. That is the only one at that time.

Q. And what time did he make that?

A. After we had all got through and the witnesses had gone.

Q. Did I understand you to say that Mr. Barnett and Mr. Neeser called these witnesses, Mr. Fleitman and Mr. Andreas?

111 A. I suppose they would be called by them.

Q. That was your recollection?

A. Yes; at least it is my opinion they were.

The defendant's counsel also called as a witness RICHARD S. ROBERTS, who testified that he was an importer and dealer in hatter's goods, and recollected acting as merchant appraiser on the importation by the Belgenland of the goods of the plaintiff in September, 1885; that he had been a merchant in New York City for forty years and an importer for thirty years; that he was appointed a merchant appraiser, and in obedience to the command went to the public store and examined the goods and appraised them according to decision rendered by the appraisers; that there seemed to have been a witness in this case; that he saw Mr. Barnett there and Mr. Barnett objected to his

112 serving as merchant appraiser; that the objection was overruled by the general appraiser, and the witness did his duty in the matter and acted as merchant appraiser; that Mr. Barnett did not state on what grounds he objected to witness acting as merchant appraiser; that the goods and samples were in the adjoining room of the general appraiser's office; that he made an examination of the goods, a thorough examination, and checked the invoices item by item, and identified the goods by the invoices and by the pieces corresponding with the invoices; that they

were plaintiffs' goods as shown by the invoices, the same goods and the same marks; that neither Mr. Barnett nor anyone else on behalf of the plaintiffs made any suggestion that the goods examined were not the plaintiffs' goods, or anything of that nature; that in his own business he imports everything that pertains to the manufacture or trimming of
113 a hat, either of a silk or of a fur or of a wool hat; that includes satins and bands and bindings; that the goods examined on this reappraisement were black satins; that Mr. Barnett remained before the reappraisement for perhaps ten or fifteen minutes, the witness doesn't remember the exact time.

On cross-examination by counsel for the plaintiffs the witness testified that his opinion, which had been generally expressed, was that from his experience in the matter of thirty-odd years his opinion was that there was a great deal of undervaluation; that he had not proclaimed such an opinion; that he had been opposed to undervaluation from first to last; that his opinion was not one recently formed.

Q. At the time of the interview between Mr. Barnett, Mr. Brower, and yourself, did Mr. Fenton come?

114 A. Possibly; I am not positive about it; that is my impression; I think he was there; I couldn't tell you the hour; it was during the appraisal; my best recollection is that Mr. Barnett said nothing, except his objection to my acting as merchant appraiser.

Defendant's counsel also called as a witness JAMES H. FRANKLIN, who testified that he was an opener and packer for the general appraiser, and had been there about eight years.

Upon samples being shown the witness, he testified as follows:

Q. Where did you procure these samples held together by that tag?

A. I cut them off a piece of goods or pieces of goods taken out of the case with this mark or number. These are my marks and my handwriting, and they were made at the time. I find that I cut those pieces, those samples, off from the pieces of goods.

Q. Whose goods?

A. The goods of Iselin, Neeser & Co.

Q. When?

115 A. August 6th, 1885, according to this date here, and I think it is correct. I made that date myself at the time. I cut them off at the request of the general appraiser, in the appraiser's office.

Upon cross-examination witness testified that sometimes there are twenty invoices from which samples are cut in one day; that he cuts the samples off, tags them, dates them, and puts them in a case.

Q. I suppose you never make a mistake?

A. Yes, sir; often, perhaps.

Q. How?

A. I don't know; in a great many ways.

In rebuttal, the counsel for the plaintiffs recalled GASPAR C. BARNETT, who testified that he had heard the testimony given by Mr. Brower; that his recollection upon the subject of Mr. Fenton's and Mr. Corbett's presence at the reappraisement was that neither was present during the time the reappraisement was in progress; that Mr. Fenton was not
116 present at any time that the witness was; that he went immediately after leaving the reappraisement to Mr. Fenton's office in

the upper part of the building, third division, and found him there at his desk, and had some conversation with him; and that while he was conversing with Mr. Fenton in regard to the case Mr. Roberts came up into Mr. Fenton's room; and the witness cleared out, he had had enough of it.

On cross-examination by counsel for the defendant the witness testified that he was present in the room possibly fifteen minutes during the reappraisement proceedings in the case of the importation by the Normandie, and was in and out of the room two or three times; that he went out in the general office where the clerks were.

Q. How did you occupy your time when you were in the clerk's office?

A. Standing around with my hands in my pockets, talking
117 with anybody I wanted to speak to.

The witness further testified that in the case of the reappraisement by the Belgenland he was present at the reappraisement from twenty minutes to half an hour; neither of the examiners were produced there on that hearing while witness was present, and that when he went out he stayed out; that in the other case he went out and in two or three times.

On redirect the witness testified that he had no information nor the slightest idea as to what Mr. Corbett or Mr. Fenton told the reappraisers, if anything.

At the close of the evidence defendant's counsel renewed their motion for a direction of a verdict for the defendant, on the ground that on the whole evidence the plaintiffs were not entitled to recover. The motion was denied, and to this decision the defendants excepted.

118 Mr. Platt summed up the case for the defendant; Mr. Stetson, for the plaintiffs.

After which the court charged the jury as follows:

WHEELER, *J.*:

GENTLEMEN OF THE JURY: This matter has been spoken about so much in your hearing that I presume you have pretty clearly in mind the questions you have to try now. Still I deem it my duty to state them over again to you somewhat. We have been very patient, all of us, to listen to this case, because it is of really more importance than the sum of money now in controversy. It is important to the officers of the Government at the custom-house that they be not embarrassed any more than they justly ought to be by any trial in court that involves any consideration of the correctness of their proceedings; they ought not to be embarrassed unduly by it. It is also important to the plaintiffs and all
119 others concerned that they should have their just rights, and have them justly considered so far as they may be by any court that is trying a case concerning them. So that you and I, and all of us, have been patient to hear all that has been said in order to do the best we can in deciding this case right, according to the law.

You have understood from what has been said that when an importation is made, at least one package out of every invoice of goods, or if there are more than ten packages in any invoice, one out of every ten shall be selected and sent to the public stores to be used as samples on appraisal. That was done in these importations. The goods are appraised—that is, the importer fixes the value in his invoice as he sees fit to fix it, then they are appraised. After he knows what sum is fixed by the appraiser he has

the right to a reappraisement before a general appraiser in this port
120 (where they have general appraisers, as I understand it), and a merchant appraiser to be appointed by the collector of the port. These plaintiffs were dissatisfied with the appraisement and applied for a reappraisement. The collector designated a merchant appraiser to act with the general appraiser to make the reappraisement.

Now, when a reappraisement is had, substantially regular in form, according to the provisions of the law, that is the end of it as to the amount. It is not to be inquired into again anywhere; in court or anywhere else. The only question we have to try is, whether there has been a substantial reappraisement according to the law and according to the rights of these importers.

When the board of reappraisal is organized, is constituted by the general appraiser and merchant appraiser, they are to appraise the goods, using these samples to look at, having one package in ten to examine, so as to arrive at the true value of the merchandise in the markets of the
121 country from whence they are imported at the time of importation. They are to do it generally on view, that is, by looking at them. But the law gives them the right to bring before them any importer, consignee or other person and to examine them if they see fit. It makes it their duty to inquire into and by all proper ways and means to ascertain their true value. That is their duty. The presumption is that they do this. The plaintiffs, however, have certain rights about it. One is, to be present at the appraisal. I think that when this board is constituted, the importers have a right to know who the board are; that they have the right to know when the appraisal will take place; that they have the right to be present at the reappraisal by the appraisers to exhibit their goods, to make any suggestion as to the examination of the goods by looking
122 at the samples and as to the production of witnesses, but that they have no right to say that certain witnesses shall be produced. The appraisers, by themselves, after looking at the goods (or before, if they see fit—if they know what the goods are) have a right to inform themselves in any way they see fit, by calling any persons they see fit, as to the material facts necessary for a just appraisement of the goods. They have the right to do that. The importer has the right to be present—to be present where the goods are and have a fair opportunity to show them, exhibit them, suggest about them, be there by his clerk or his agent for that purpose. I do not think he has any right to be there to examine witnesses, and I don't think he has a right to explore the sources of their information. I don't think he has a right to have counsel there as such, as counsel appears here, to cross-examine witnesses and argue the case. A person should not be excluded from being there as agent because he
123 is a lawyer or because he follows any other calling. At that time, if he were the real agent of the party to be there when the appraisers were and point out the goods and see that they had the right goods and that the samples were fairly examined and looked over, it wouldn't make any difference who it was, whether it was a lawyer or any other person. They had the right to appear there by some one and to have this done. I don't think they had any right beyond that.

Now, if these plaintiffs, as to each of these importations when the reappraisement was made, had a fair chance to be present at the place where

the appraisement was had and to call the attention of the appraisers to the goods, their quality, their value—as to anything else that they saw fit—if they had that chance and were not cut off from it in any essential degree, if their representative there had any opportunity to go as far as he pleased in that respect, and to have the goods there as near as he
124 wanted to have them be, why then the plaintiffs have no ground to complain on that score. The proceeding was right enough. But, if not, if they were cut off from their right to know and to be present so as to know what was going on, and to know whether their goods were the ones that were being examined, if they were shut out from the appraisement substantially, then I think they have a right to recover in this case, for then they didn't have the benefit of the reappraisement that the law gives them. So that is one question for you to decide, whether they were cut off from any substantial right that they had to be there present when their goods were reappraised by this board. If they were not, then the verdict should be for the defendant as to that. If they were cut off from any such right, then the plaintiffs are entitled to a verdict for this excess, this addition. Now, there is one other question. This reappraisement is to be by these two appraisers, the general appraiser and the merchant appraiser. They are to act according to their own judgment
125 in making their appraisement. Without control of anybody else they are to inquire themselves by all proper ways and means as to the value of these goods, and they are to bring before them such persons as they determine are fit and necessary to enable them to come to a judgment, and to proceed in their own way to ascertain the true and just value of the goods. They are supposed to be impartial and to appraise these goods at their true worth. They are to follow their own judgment untrammelled by anybody else, except the law. If, therefore, they did not for any reason follow their own judgment as to their procedure in a substantial respect, then the plaintiffs did not have the benefit of their judgment and this appraisal is not good. If they did follow their own judgment, then the appraisal is good in that respect. The question is not what somebody wrote to them, or what they read, or what they looked at. The question is whether they were controlled, whether they acted their own judgment and discretion or were controlled by somebody out-
126 side. If they were not controlled by anything communicated to them, why, it is of no consequence that there was a letter. They might read the law, might read regulations, might read anything, but if it didn't swerve them from doing their duty according to their own judgment, it wouldn't affect anything. If it did, so that they cut off the plaintiffs from a substantial right, if they acted not in accordance with their own views of their duty, but in accordance with somebody else's, then the plaintiffs were deprived of their reappraisement that they were entitled to have. The decision of these two questions will enable you to determine which way your verdict shall be. If the plaintiffs were not cut off from any substantial right and the appraisers followed their own judgment and discretion fairly and really, then return a verdict for defendants. If the appraisers were controlled by some outside influence, so that they didn't act their own judgment, then return a verdict for the plaintiffs.

Or, if the plaintiffs were cut off from their fair chance to be there when the appraisal was made, from seeing their goods and pointing
127 out the quality to the appraisers, then return a verdict for the plaintiffs. If you find a verdict for the plaintiffs it may be as to one of these importations or it may be as to both; you may think it is all right as to one and not as to the other. There is no question before you about sums. If the plaintiffs are entitled to recover, as to the Normandie the sum is $1,539.19; if he is entitled to recover as to the Belgenland, it is $584.95; and if as to both, the sum is $2,124.14. You may take this bit of paper (a memorandum of amounts and totals taken from the stenographer's minutes), so that if you find a verdict for the plaintiffs you can go by it in fixing upon the amount. Of course you will examine this subject carefully and candidly and arrive at a conclusion which shall be just as to the plaintiffs and just as to the defendant.

The defendant's counsel requested the court to charge as follows:

I. That, no fraud being proven, the valuation of the merchandise in this case can not be reviewed by the jury.

128 II. That Congress has given the power by statute to the general appraiser and merchant appraiser to appraise the value of the goods on reappraisement by reasonable means.

III. That the reappraising officers are not, under the statute, a judicial tribunal, to be governed by the rules and laws of courts, nor by the preponderance of testimony.

IV. That no issue is raised by the protest in this action concerning the exclusion of counsel, and the jury are not to consider that question.

V. That no issue is raised by the protest in this action as to the examination of the plaintiffs' goods on the reappraisal in this case, and the jury therefore are not to consider that question.

VI. That the statute has vested jurisdiction, power, and discretion in the reappraising officers to determine in what manner, that is, by what reasonable ways and means they may ascertain the correct value of the goods.

VII. That there is no law requiring the reappraising officers to examine or appraise the goods in the presence of the importer, their agents, or consignees.

129 VIII. That there is no law requiring the reappraising officers to examine witnesses in the presence of the importer, or to exhibit the depositions or testimony of witnesses to the importer, or to allow witnesses to be cross-examined by the importer or by his agents or by his counsel.

IX. That there is no law requiring the reappraising officers to summon witnesses for the importer.

X. That there is no law requiring the reappraising officers to examine any witnesses whatever, unless they deem it proper to do so, in their discretion.

XI. That the statute empowers the Secretary of the Treasury to establish rules and regulations, not inconsistent with the laws of the United States, to secure a just, faithful, and impartial appraisal of all merchandise imported into the United States.

XII. That no witnesses for the plaintiffs were actually produced before the reappraising officers in this case and none actually excluded.

XIII. That no counsel for plaintiffs actually appeared before the reappraising officers in this case and none were actually excluded.

130 XIV. That there is no law requiring the reappraising officers to deliberate and come to a conclusion on the valuation of the goods in the presence of the importer, his agents, or consignees.

XV. That there is no law requiring the goods to be present in the same room where witnesses (if any) are examined or the deliberations of the reappraising officers are had, or where the importer makes his statement, unless the importer should so request.

XVI. From the undisputed evidence in this case, there is no question here as to the identity of the goods that were examined and appraised by the reappraising officers.

XVII. That the mere fact of a merchant being an importer or manufacturer does not make him an indiscreet or inexperienced merchant and ineligible to be lawfully appointed a merchant appraiser.

The court declined to charge otherwise than as already charged,

131 and denied each of such requests except as charged, to each of which rulings the defendant's counsel duly excepted, which exceptions were allowed by the court.

The jury returned and rendered a verdict for the plaintiffs for $2,124.14.

And forasmuch as the exceptions, matters, and things aforesaid, would not otherwise appear by the record, I have settled, allowed, and signed this bill of exceptions on the prayer of the said defendant by his counsel; and it is

Ordered, that the same be filed as a part of the record herein with like force and effect as if it had been reduced to writing, signed, and filed before the case was given to the jury.

Witness my hand this 13th day of October, 1887.

HOYT H. WHEELER.

132 (Endorsed:) N. S., 11066. U. S. circuit court, southern district of New York. William E. Iselin et al., versus Edward L. Hedden. Defendant's bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, , 188 . , attorney for plaintiff. To , attorney for plaintiff.

(File mark:) U. S. circuit court. Filed Nov. 3, 1887. Timothy Griffith, clerk.

133 Supreme Court of the United States.

EDWARD L. HEDDEN, PLAINTIFF IN ERROR,
vs.
WILLIAM E. ISELIN, JOHN G. NEESER, AND Afred Von der Muhl, defendants in error.
} Assignment of errors.

Afterwards, to wit, on the second Monday of October, of the same term, before the justices of the said court at the Capitol in Washington, come the said plaintiff in error, by Stephen A. Walker, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to

wit: That by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

(Sg'd) STEPHEN A. WALKER,
Attorney for Plaintiff in Error.

134 (Indorsed:) United States Supreme Court. Edward L. Hedden, plaintiff in error, vs. William E. Iselin & al., defendant in error. Assignment of error. Stephen A. Walker, attorney for plaintiff in error. Due service of a copy of the within assignment of error is hereby admitted this 13th day of September, 1888. Bangs, Stetson, Tracy & MacVeagh, attorneys for deft. in error. To Messrs. Bangs, Stetson, Tracy & MacVeagh, attorneys for defts. in error.

(File mark:) U. S. circuit court. Filed Sept. 13, 1888. John A. Shields, clerk.

135 Supreme Court of the United States.

EDWARD L. HEDDEN, PLAINTIFF IN ERROR,
WILLIAM E. ISELIN, JOHN G. NEESER, AND Alfred Von der Muhl, defendants in error. } Joinder in error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Bangs, Stetson, Tracy & MacVeagh, their attorneys, come here into court and say that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

(Sg'd) BANGS, STETSON, TRACY & MACVEAGH,
Attorneys for Defendant in Error.

136 (Indorsed:) United States Supreme Court. Edward L. Hedden, plaintiff in error, vs. William E. Iselin, John G. Neeser, and Alfred Von der Muhl, defendants in error. Joinder in error, Bangs, Stetson, Tracy & MacVeagh, attorneys for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 13 day of Sept., 1888. (Sg'd) Stephen A. Walker, attorney for plaintiff in error.

(File mark:) U. S. circuit court. Filed Sept. 13, 1888. John A. Shields, clerk.

137 UNITED STATES OF AMERICA, *ss:*

To William E. Iselin, John G. Neeser, &. Alfred von der Muhl, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-eight, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edward L. Hedden, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated September 12th, 1888.

E. HENRY LACOMBE,
Circuit Judge.

138 Due service of a copy of the within citation is hereby admitted this 13 day of September, 1888.

BANGS, STETSON, TRACY & MACVEAGH,
Att'ys for Def'ts in Error.

(Indorsed:) 11066. U. S. Supreme Court. Edward L. Hedden, plaintiff in error, against William E. Iselin et al., defendants in error. Citation. Stephen A. Walker, attorney for plaintiff in error. attorneys for defendants in error.

(Stamp:) U. S. circuit court. Filed Sep. 13, 1888. John A. Shields, clerk.

(Indorsed on cover:) No. 144. Edward L. Hedden, lat ecollector of the port of New York, plaintiff in error, vs. William E. Iselin, John G. Neeser, and Alfred Von der Muhl. S. New York, C. C. U. S. Filed October 2, 1888.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

EDWARD L. HEDDEN, LATE COLLECTOR, etc., plaintiff in error.
vs.
WILLIAM E. ISELIN AND OTHERS.
No. 144.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

EDWARD L. HEDDEN, LATE COLLECTOR, etc., plaintiff in error.
vs.
WILLIAM E. ISELIN AND OTHERS.

No. 144.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This suit was commenced in the supreme court of the State of New York June 23, 1886, and is brought by William E. Iselin and others, plaintiffs, against Edward L. Hedden as collector of the port of New York (pp. 2, 15).

The case was transferred to the circuit court of the United States for the southern district of New York and was tried November 24 and 30 and December 1 of that year, before Judge Wheeler and a jury, whereupon the jury, after arguments, charge, and deliberation, rendered a verdict in favor of the plaintiffs for $2,124.14 (pp. 6, 7).

The two classes of goods in question are increased in valuation more than 10 per cent above the invoice valuation upon the ordinary appraisal by the appraiser, whereupon the importers asked for a reappraisement pursuant to law.

The reappraisement before the general appraiser and a merchant appraiser then followed, and the proceedings had by and before them are investigated by the trial below.

Two importations are involved—one of plain, colored silks imported from Horgen, and brought from Havre per steamship *Normandie*, and entered June 20, 1885, upon which the additional duty assessed by the board of reappraisers was $326.50, and the consequent penal duty was $1,099.60, making an increase of $1,426.10; and the other of black satins composed of cotton and silk, imported from Zurich, and brought from Antwerp per steamer *Belgenland*, and entered June 18, 1885, upon which the additional duty assessed was $173, and the consequent penal duty was $355.40, making an increase of $528.40, the whole constituting, with the interest included to date of trial, the $2,124.10 (fol. 44) stated in the verdict.

For this sum, with costs, judgment was entered (p. 7).

No question of classification or rating of the goods imported is presented, but the plaintiffs below claim that they were denied rights given them by law in the proceedings of reappraisement.

The court says (fol. 120):

> The only question we have to try is, whether there has been a substantial reappraisal according to the law and according to the rights of these importers.

This question is resolved by the court into the two following questions, which were the only ones submitted to the jury:

One is, whether the importers were cut off from any substantial right to be present when their goods were reappraised by the board of reappraisal; and the other is, whether the general appraiser and the merchant appraiser in their action followed their own judgment "or were controlled by somebody outside." (Fols. 124 to 126.)

The court states in two forms the questions submitted (fol. 126) as follows:

> If the plaintiffs were not cut off from any substantial right, and the appraisers followed their own judgment and discretion fairly and really, then return a verdict for defendants. If the appraisers were controlled by some outside influence, so that they didn't act their own judgment, then return a verdict for the plaintiffs. Or, if the plaintiffs were cut off from their chance to be there when the appraisal was made, from seeing their goods and pointing out the quality to the appraisers, then return a verdict for the plaintiffs.

The jury returned a verdict in favor of the importers for the amounts of all increase made to the invoices in both cases, but the specific ground of their verdict is not stated.

ASSIGNMENTS OF ERROR.

1. The circuit court erred in admitting, under objection, the paper or protest filed with the reappraisers during the proceedings of reappraisement, and set forth at the foot of page 18 of the Record.

2. The circuit court erred in denying the motion made on behalf of the defendant below for the direction of a verdict for said defendant on the ground that on the whole evidence the plaintiffs were not entitled to recover.

3. The circuit court erred in admitting testimony offered and received upon the theory that the jury was at liberty to find that the reappraisers in acting in conformity with the instructions of the Secretary of the Treasury contained in the communication known as the letter of June 9, 1885, acted under outside influence and not in accordance with their own judgment.

4. The court erred in allowing as material evidence answers of defendant's witness, General Appraiser Brower, to questions asked by plaintiff's counsel, as follows (p. 27):

> Q. Had any subsequent or definite instructions been received by you after the date of this letter and before you conducted the reappraisement of the *Normandie* case?
>
> Mr. PLATT. I object to that as irrelevant and incompetent.
>
> Which objection was overruled by the court, to which ruling the defendant excepted, which exception was allowed by the court.
>
> A. No, sir.
>
> Q. Upon that date did you regard the instructions of this letter as instructions under which you were acting?
>
> Mr. PLATT. That is objected to as irrelevant.
>
> Which objection was overruled by the court, to which ruling defendant excepted, which exception was allowed by the court.
>
> A. The question of that letter did not come up on the reappraisement whatever. So far as that might affect any reappraisement I certainly did.

5. The court erred in charging the jury, in effect, that if the reappraisers were controlled or influenced in their proceedings of reappraisement by the aforesaid letter of June 9, 1885, the jury was thereupon authorized to find that the reappraisers were subjected to an outside influence which vitiated the reappraisal.

6. The court erred in declining to charge the jury in accordance with request XI (Rec., p. 40) of defendant's requests to charge.

POINTS.

I.

THE COURT ERRED IN RECEIVING IN EVIDENCE THE PAPER CALLED A PROTEST OR DEMAND FILED BY THE IMPORTERS UPON THE REAPPRAISAL.

This paper was improperly admitted against the objection of the defendant below.

The same as set forth (fol. 54) is as follows:

> *To Mr. George V. Brower, general appraiser of port of New York, and Mr. James Booth, merchant appraiser herein:*
>
> You will please take notice that the undersigned respectfully demand and insist that they may be present during the reappraisement herein, and that they may personally, as well as by their employés and their agents, and also by witnesses desired to be furnished, fully informed upon the subject-matter, present testimony as to the true dutiable value of the importation herein.
>
> And further, that they may have reasonable opportunity to cross-examine witnesses and to test and

> disprove testimony to be introduced against them alleging the incorrectness of the invoice; and further, that the merchant appraiser acting herein is not qualified for such action under the statutes.

Were this a request that the importers might be present at the time of the reappraisal to take such steps as they are by law permitted to take, it would be unobjectionable; but they had already received a notice of the time and place of reappraisal, and were present in pursuance thereof.

The first paragraph of this paper consists of a single sentence, and is a demand that the importers "may be present during the reappraisement, *and* that they may personally, as well as by their employés and agents, and also by witnesses * * * present testimony," etc.

The second paragraph goes still further and asks for an opportunity to cross-examine witnesses and to test and disprove the testimony introduced against them.

The admission of this evidence was error; and it can not be assumed that the general instructions given to the jury two or three days later, in which no specific reference is made to this incompetent evidence, destroyed the effect upon the minds of the jury that its admission may have created.

Among the requests to charge submitted by defendant's counsel is the following:

> VIII. That there is no law requiring the reappraising officers to examine witnesses in the presence of the importer, or to exhibit the depositions or testimony of witnesses to the importer, or to allow witnesses to be cross-examined by the importer or by his agents, or by his counsel.

Which the court declined to charge "otherwise than as already charged."

It is submitted that the jury may have been misled by these acts.

II.

UPON THE WHOLE EVIDENCE THE PLAINTIFFS BELOW WERE NOT ENTITLED TO RECOVER, AND A VERDICT SHOULD HAVE BEEN DIRECTED FOR THE DEFENDANT.

The witness, Gasper C. Barnett, testified (fol. 53) that he represented the plaintiffs before the reappraisers in the case of the importation by the *Normandie*.

He there demanded much more than the plaintiffs were entitled to by law. He sought to ascertain what evidence the reappraisers received, and who the witnesses were, and sought to see the testimony, and to call witnesses in plaintiffs' behalf, and asked to remain present during the proceedings of reappraisal; and also asked to be present by counsel on the reappraisement. (Fols. 55, 56.)

It is true that the witness says (fol. 56): "We were informed that the orders of the Treasury Department were such that we could not be allowed to know anything about the case at all," but the subsequent testimony of both plaintiffs and defendants shows that this general assertion was incorrect.

The witness says (fols. 57, 58):

> Mr. Neeser, as well as Mr. Vogel, one of our gentlemen, and myself were there, and we made a statement about the goods. They denied us these other privileges that I have referred to.

This witness also states (p. 37) that he was present in the room about fifteen minutes during the reappraisement proceedings.

Upon the reappraisal of the goods imported by the *Belgenland*, the same witness states that he appeared before the board for the importers. He objected to the merchant appraiser; he also asked to see any testimony they had in the case, and thinks he asked the summoning of specified witnesses, and asked to examine the examiner, Mr. Fenton, and called for a copy of the stenographer's minutes. He made his statement—

> Q. Did you make any statement with reference to the value of the goods?
>
> A. Yes, sir. (Pp. 20, 21.)

This witness states (p. 37) that in the case of the *Belgenland* he was present at the reappraisement from twenty minutes to half an hour.

The evidence given by the defendant below (pp. 24 to 36) shows in detail that a fair reappraisal was had, and that the same was conducted in accordance with the law, the regulations, and the proper instructions of the Treasury Department, and plaintiffs' witness, upon being recalled (p. 36) made no material contradiction.

No question is made as to the identity of the goods, nor of the samples shown to have been cut off and marked.

It does not appear that the plaintiffs below were cut off from any substantial right in the reappraisement proceedings.

III.

UNDER THE CHARGE AND THE RULINGS OF THE COURT THE JURY WAS IMPROPERLY PERMITTED TO FIND THAT THE REAPPRAISERS DID NOT ACT UPON THEIR OWN JUDGMENT, BUT WERE CONTROLLED BY OUTSIDE INFLUENCES.

Under the seventh point of the protest, the importers allege that the reappraisement was illegal and void (p. 12):

> Seventh. Because in the conduct of such reappraisement the said general appraiser and merchant appraiser did not exercise their own judgment and discretion, but under the stress and solely because of an order issued by the Secretary of the Treasury, under date of June 10, 1885, and of other orders subsequently issued by the said Secretary, did refuse to the importers any opportunity whatever to introduce testimony in their own behalf, or to cross-examine witnesses, or to disprove testimony opposed to them.

On p. 27 of the record, it appears that when General Appraiser Brower was being cross-examined by counsel for plaintiffs below, he stated that the letter of the Secretary of the Treasury, dated June 9, 1885 (pp. 16, 17), was called to his attention in 1885, and that he then read the same carefully.

The following questions, objections, rulings, and answers then appear in the case:

> Q. Had any subsequent or definite instructions been received by you after the date of this letter and before you conducted the reappraisement of the *Normandie* case?

Mr. PLATT. I object to that as irrelevant and incompetent.

Which objection was overruled by the court, to which ruling the defendant excepted, which exception was allowed by the court.

A. No, sir.

Q. Upon that date did you regard the instructions of this letter as instructions under which you were acting?

Mr. PLATT. That is objected to as irrelevant.

Which objection was overruled by the court; to which ruling defendant excepted, which exception was allowed by the court.

A. The question of that letter did not come upon the reappraisement whatever. So far as that might affect any reappraisemement, I certainly did.

After charging upon the point arising out of the proceedings before the appraisers, the court charges (p. 39) as follows:

Now, there is one other question. This reappraisement is to be by these two appraisers, the general appraiser and the merchant appraiser. They are to act according to their own judgment in making their appraisement. Without control of anybody else they are to inquire themselves by all proper ways and means as to the value of these goods, and they are to bring before them such persons as they determine are fit and necessary to enable them to come to a judgment, and to proceed in their own way to ascertain the true and just value of the goods. They are supposed to be impartial and to appraise these goods at their true worth. They are to follow their own judgment untrammeled by anybody else, except the law. If, therefore, they did not for any reason follow their own judgment as to their procedure in a

substantial respect, then the plaintiffs did not have the benefit of their judgment and this appraisal is not good. If they did follow their own judgment, then the appraisal is good in that respect. The question is not what somebody wrote to them, or what they read, or what they looked at. The question is whether they were controlled, whether they acted their own judgment and discretion or were controlled by somebody outside. If they were not controlled by anything communicated to them, why, it is of no consequence that there was a letter. They might read the law, might read regulations, might read anything, but if it didn't swerve them from doing their duty according to their own judgment, it wouldn't affect anything. If it did, so that they cut off the plaintiffs from a substantial right, if they acted, not in accordance with their own views of their duty, but in accordance with somebody else's, then the plaintiffs were deprived of their reappraisement that they were entitled to have. The decision of these two questions will enable you to determine which way your verdict shall be.

A little later in the charge the court repeats (p. 39):

> If the appraisers were controlled by some outside influence, so that they didn't act their own judgment, then return a verdict for plaintiffs.

By the request XI (p. 40) counsel for the collector requested the court to charge as follows:

> XI. That the statute empowers the Secretary of the Treasury to establish rules and regulations, not inconsistent with the laws of the United States, to secure a just, faithful, and impartial appraisal of all merchandise imported into the United States.

Which the court declined to charge "otherwise than as already charged," and exception was taken and allowed.

It is plain that the object aimed at by the plaintiffs below and by the court was the letter of the Secretary of the Treasury Manning, addressed to General Appraiser Perry, under date of June 9, 1885, which letter is put in evidence by said plaintiffs (pp. 16, 17), and is claimed by them to be in violation of their legal rights.

Unless said letter is to be held to be an illegal assumption of authority and a violation of the lawful rights of said plaintiffs, then the evidence and the charge complained of and the finding of the jury based thereon are all without legal support.

Although only the protest filed in the case of the *Belgenland* is set forth in the record, both were put in evidence (fol. 32), and a fair inference is that they were substantially alike.

By the seventh point of the protest the protestants connect their objection with the old contention of a right to turn a reappraisal into a trial, but the charge that "in the conduct of such reappraisement the said general appraiser and merchant appraiser did not exercise their own judgment and discretion," is distinctly made, and the Secretary's letter of June 10th is specified.

The cross-examination of General Appraiser Brewer quoted above excludes from this consideration all other instructions, and presents said letter as the single influence outside of the reappraisers complained of.

The charge constitutes the question of whether they "were controlled by somebody outside," one of the two questions in the case for the jury.

The court says: "If they were not controlled, * * * *it is of no consequence that there was a letter.* They might

read the law, they might read regulations, might read anything, but if it didn't swerve them from doing their duty according to their judgment, it wouldn't affect anything."

It is manifest that the jury were left to find, that they were led to assume, that if the reappraisers were guided by the Secretary's letter or accepted it as instructions as to their duties they were controlled from "outside," and did not act on their own judgment. This was a serious error, and should destroy the verdict.

This letter of the Secretary of the Treasury, dated June 9, 1885, came before this court in the case of *Auffmondt* v. *Hedden* (137 U. S., 310), and accompanies the opinion in the marginal notes (pp. 316, 319).

The instructions of this letter are held to be proper. It is declared (p. 323) that—

> The regulations prescribed in the instructions from the Treasury Department are reasonable and proper. By section 2949 of the Revised Statutes, the Secretary of the Treasury has power to establish "rules and regulations, not inconsistent with the laws of the United States, to secure a just, faithful, and impartial appraisement of all merchandise imported into the United States;" and by section 2652 it is made "the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws, and in case any difficulty shall arise as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary of the Treasury" is made conclusive and binding.

And it is further stated (p. 325) that—

> There is nothing in the instructions of the Secretary of the Treasury, or in any of the regulations prescribed, or in the evidence in this case, which shows that the appraisers were not free to perform their duties properly, as required by the statute.

It is therefore submitted that the question involved in this point has been practically determined by this court, and that it must now be held that nothing contained in that letter justifies the position taken upon the trial by the plaintiffs and by the court below.

A. N. PARKER,
Assistant Attorney-General.

Supreme Court, U. S.
FILED
JAN 5 1892
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 144 January 5, 1892.

EDWARD L. HEDDEN, LATE COLLECTOR OF THE PORT OF NEW YORK,
Plaintiff in Error,

against

WILLIAM E. ISELIN ET ALS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANTS IN ERROR.

FRANCIS LYNDE STETSON,
Counsel.

The Evening Post Job Printing House, N. Y.

priety of the letter of instructions to General Appraisers issued under date of June 9, 1885, by the Secretary of the Treasury (Record, 45).

But the correctness of this letter was asserted and adjudicated by the learned Judge below in this case (Record, 68) as certainly as when he subsequently sustained the letter in the *Auffmordt* case (30 Fed. Rep., 360).

It thus appears that the learned Judge submitted the cause to the jury, not upon any theory in conflict with the ruling in the *Auffmordt* case, but because he assumed that there were questions of fact requiring determination by the jury.

This inference is sustained by the remarks of the Judge himself, both in denying the defendant's motion to dismiss (Record, 70) and in his instructions to the jury (Record, 126–127).

Two questions of fact were distinctly indicated by the Court:

1. Were the importers cut off from the right to be present when and where their goods were examined and appraised? (Record, 70, 124, 127.)

2. Were the appraisers controlled by any outside influence so that they did not act on their own judgment; or did they, after reading anything or everything, follow their own judgment fairly and really? (Record, 126, 127).

The jury under these instructions having found a verdict for the plaintiffs, it is now submitted in their behalf that the learned Assistant Attorney-General has not in any one of his six assignments of error indicated sufficient reason why the jury's disposition of the facts in dispute should now be overturned.

These assignments of error will now be considered, though for convenience of discussion, the order of their examination may be slightly changed.

POINTS.

First.

The Circuit Court did not err either in denying the motion of the defendant below for a verdict for defendant, or in its charge to the jury, or in declining to make a different charge.

1. The record, though giving an extended, does not present a verbatim or wholly complete, report of the evidence at the trial (*e. g.*, Exhibits 17, 18, 21, Record, 65, are omitted), thus leading this Court to presume that there was presented on the trial evidence which justified the instructions and rulings of the Circuit Court. (*Russell* v. *Ely*, 2 Black, 575–581).

2. The evidence as presented by the record discloses several features of the re-appraisement justifying inquiry of the jury whether the plaintiffs had been accorded their full rights. Some of these may be indicated, viz.:

(*a.*) *Barnette*, testified (Record, 56): "We were informed that the orders of the Treasury Department "were such that we could not be allowed to know "anything about the case at all, and then we were "politely waived out of the room."

The learned Assistant Attorney-General undertakes to show that "this general assertion was incorrect," but this, we submit was a matter to be passed upon at trial by the jury, and not on appeal by counsel.

(*b.*) It also appears that the importers were not present, were not notified nor expected to be present, and were practically excluded when the merchant appraisers in a room by themselves (Record, 73–74) examined goods which they assumed to be those of the importers.

Barnette testified (59) that he did not see the goods or a sample present at the examination or appraisal, and the testimony of General Appraiser *Brower* (73, 80), Appraiser *Booth* (108), Appraiser *Roberts* (112), indicates that they had nothing further to go upon than an indication by *Franklin*, the fallible packer and opener (114–115).

The examination was part of the re-appraisement at which the importers specifically requested to be present (54), both orally and by the paper then handed Messrs. Brower and Booth (56), the General Appraiser differing with Barnette "as to the inter-"pretation of the word 'present'" (57).

More specific request to be present at this particular part of the appraisement was not necessary in view of the forbidding attitude of the appraisers, and the statements of fact, were sufficiently variant to call for a jury's determination as to the real transaction. The verdict for the importer establishes the fact of such exclusion and justified the Judge in supposing it possible that the jurors might think "that "the importers were cut off from a fair right to be "there when the goods were examined; I don't "mean when the appraisement was made—for of "cause he wouldn't have the right to take part in "the deliberation—but when they examined the "goods—when they had the view" (70, 122, 124).

The learned Assistant Attorney-General does not suggest that the examination of the goods should have been made outside of the view of the importers. He merely indicates his belief that Barnette's testimony was incorrect, thus differing from the jury.

3. The letter of instructions issued June 9, 1885, though correct in itself, might at the date of this, the first re-appraisements subsequent thereto, have been so misconstrued by the appraisers as to lead to injustice on their part.

The question now, is not as to the correctness of that letter recognized and approved by the Court (68; 121-123), but as to the conduct of the appraisers thereunder.

The Circuit Judge, therefore, rightly charged the jury that they were to decide whether or not the appraisers, reading the letter, as they had a right to do, and the letter in itself being perfectly correct, acted in accordance with their own judgment (125-126).

The verdict of the jury, therefore, was an impeachment, not of the letter but of the conduct of the appraisers, whose personal appearance and testimony in connection with that of the other witnesses, enabled them as triers of the facts, to draw inferences of fact from oral testimony not otherwise wholly conclusive.

4. Upon all these considerations, it is respectfully submitted that these two points at least were sufficient to distinguish this case effectually if not broadly from the *Auffmordt* case.

5. It may also be proper to call attention to the fact that the importers protested (33-54, 60), and there was evidence tending to show (62) that the merchant appraiser Roberts (as well as the Appraiser Booth, 59, 108) "was not a discreet and experienced "merchant, familiar with the character and value "of the merchandise in question" (33), and that he was not a disinterested person (63, 112).

Though this ground of impeachment does not appear to have been called to the attention of the jury in express terms, it was a question in issue, the subject of evidence, and, perhaps, to be considered in support of a verdict and a judgment thereon.

Second.

No material error was committed in receiving in evidence the paper called a protest or demand filed by the importers upon the re-appraisal.

1. This protest (54) was introduced for the purpose not of proving its legal sufficiency, but merely of showing that at the re appraisal the importers seasonably objected that Mr. Booth was not qualified to act as merchant appraiser under the statute. This was the first but an essential step in the importers' case to impeach the appraisement on this ground. At that stage certainly the Court could not exclude the protest as an entirety.

If the District Attorney desired at that time to exclude the rest of the paper, or subsequently to strike out the whole, he should have moved specifically. But upon the record it was not error to receive the protest as evidence not of the accuracy of its points, but merely to show that protest had been seasonably made.

2. In any aspect, the concluding charge to the jury (122) was sufficient to relieve that body from any constraining and erroneous suggestion in this protest of counsel offered three days before, especially as every one of its statements at greater length was already in evidence without objection in the importers' protest to the Collector (32–36).

Third.

No error was committed in receiving evidence tending to show that the re-appraisers acted under outside influence and not under their own judgment.

Inasmuch as the Court carefully sustained the letter of June 9, 1885 (68), and every one of its propositions (122–123), and instructed the jury (126) that the appraisers were entitled to read the letter, it was perfectly proper to permit examination of appraisers to be made before the jury to enable these triers of fact to infer how the appraisers had, as matter of fact, understood and administered their legal authority. If, as matter of fact, the effect of whatever they had heard or read, be it law, letter or regulations, was that (126) they "were controlled by some "outside influence, *so that they didn't act on their* "*own judgment*," then, as matter of law, the appraisers did not perform their legal duty, and their action was invalid, as found by the jury, whose verdict should not be disturbed.